Supreme Court, U.S.
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No. (1)

In The

Supreme Court of the United States

ESTATE OF PATRICIA B. WARD,
JOSEPH M. WARD

Petitioners

vs.

TRANS UNION, LLC,

Respondent

On Petition For A Writ of Certiorari To The United States Court of Appeals For The Fourth Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The Petitioners suffered a plethora of unfavorable rulings in the 4th Circuit Court of Appeals and in the District Court for the Eastern District of North Carolina in connection with their Action brought against Trans Union LLC alleging multiple violations of the Fair Credit Reporting Act and two associated State claims. The questions presented are:

Whether the Circuit Court and/or the District Court committed any reversible errors, in particular reversible errors to which improper conduct of the Defendant and/or its Counsel was a causation factor?

Whether any of the acts and/or omissions of the Circuit Court and/or the District Court and/or the Defendant and/or the Defendant's Counsel violate the Plaintiffs' rights to due process and equal protection under the laws, pursuant to the 5th and 14th Amendments of the United States Constitution? In particular, whether or not the very stringent standards placed upon the Plaintiffs as to the proof of negligence and/or the proof of emotional damages violated the Plaintiffs' rights to due process and equal protection under the laws pursuant to the 5th and/or 14th Amendments of the United States Constitution.

Whether the time has come for this Honorable Court to set forth a single standard for the proof of emotional distress damages in all FCRA cases in all Circuits to replace the divergent standards now being employed?

Whether the time has come for this Honorable Court to set forth a single standard as to whether a plaintiff bears the burden of proof of negligence or that the burden of disproof falls on the defendant or whether the plaintiff and the defendant jointly share that burden in FCRA cases, especially in connection with 15 U.S.C. 1681e(b) and (a) claims, thereby replacing the divergent standards now being employed among the Circuits?

Whether the fact that the District Court did not come forth with any reconsideration of its entry of interlocutory summary judgments against Plaintiff Patricia B. Ward and Plaintiff Joseph M. Ward before or during the trial, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, (keeping in view the new standard for the proof of willful violation of the FCRA put into effect by this Honorable Court on June 4, 2007 in its Opinion set out in Safeco Insurance Co. of America v. Burr, 127 S.Ct. 2201 2207) constituted

reversible error and whether it violated the Plaintiffs' rights to due process and equal protection under the laws, pursuant to the 5th and 14th Amendments of the United States Constitution?

Whether or not any of the Defendant's successful efforts to keep the jury from hearing the truth about how the release of tax liens was monitored for Trans Union by Greet America at the Pitt County Courthouse in the early 1990s involved violation(s) of the Plaintiffs' rights to due process and equal protection under the laws, pursuant to the 5th and/or 14th Amendments of the United States Constitution?

If any of the Defendant's actions and/or omissions and/or any of the District Courts acts and/or omissions in this Action violated either of the Plaintiff's rights or both Plaintiffs' rights to due process and equal protection under the laws, does the fact that the 4th Circuit Court of Appeals, in effect, gave a blanket endorsement of the District Court's proceedings by remaining silent as to any and all of the proceedings in the District Court except for having the Clerk of the Court of Appeals enter a judgment stating: "In accordance with the decision of this Court, the judgment of the District Court is affirmed" and doing

so without citing any reasons for turning away all of the Plaintiffs' contentions as to defects having occurred in connection with proceedings in the District Court and further by doing so without creating a record available to the public at the 4th Circuit Court of Appeals Courthouse or through publication justifying the 4th Circuit Court of Appeals decision, violate the Plaintiffs' right to due process and equal protection under the laws, pursuant to the 5th and 14th Amendments of the United States Constitution?

COMPLIANCE WITH SUPREME COURT RULE 29.4(c)

The Petitioners hereby recite that 28 U.S.C. §2403(b) may apply to this Petition and that a copy of this petition has been served on North Carolina Attorney General Roy Cooper. To the best of the Petitioners' knowledge, the District Court of the 4th Circuit Court of Appeals, pursuant to 28 U.S.C. 2403(b), did not certify to the North Carolina Attorney General the fact that the constitutionality of N.C. General Statute 28A-18-1 was being drawn into question. The constitutionality of N. C. General Statute 28A-18-1 was first drawn into question by the

Plaintiffs on Pages 44-45 of their Appellate Brief filed in this Action on July 7, 2008.

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Petitioner, Estate of Patricia R. Ward, Petitioner, Joseph M. Ward, respectfully pray that a writ of certiorari issue to review the judgment below.

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OPINIONS BELOW

The Judgment of the United States Court of Appeals for the Fourth Circuit appears at App. 1 to the Petition and was not reported. Entered on February 17, 2009.

The Order of the United States Court of Appeals denying Petitioners' Petition For Rehearing and Petition For a Rehearing en Banc appears at App. 2 to the Petition and was not reported. Entered on March 27, 2009.

The United States District Court Judgment in favor of Trans Union Corporation, which was entered in the District Court For Eastern North Carolina against The Estate of Patricia B. Ward appears at App. 3 to the Petition and was not reported. Entered on August 30, 2007.

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JURISDICTION

The United States Court of Appeals for the Fourth Circuit decided the Petitioners' case on February 17, 2009. The Plaintiffs timely filed a Petition For Rehearing and a Petition For Rehearing En Banc, both of which were denied by the Fourth Circuit of Appeals on March 23, 2009. Petitioners timely filed a petition for certiorari. The Petitioners invoke this Court's jurisdiction under 28 U.S.C. §1254 (1) and under 15 U.S.C. §1681 et seq.

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CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be

compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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N.C. General Statute Section 28A-18-1

Survival of actions to and against personal representative.

(a) Upon the death of any person, all demands whatsoever, and rights to

prosecute or defend any action or special proceeding, existing in favor of or against such person, except as provided in subsection (b) hereof, shall survive to and against the personal representative or collector of his estate.

(b) The following rights of action in favor of a decedent do not survive:

(1) Causes of action for libel and for slander, except slander of title;

(2) Causes of action for false imprisonment;

(3) Causes of action where the relief sought could not be enjoyed, or granting it would be nugatory after death.

15 U.S.C. Section 1681 et seq.

STATEMENT OF THE CASE

On June 6, 1991, a notice of a joint Federal tax lien in the amount of $27,174.39 against Patricia B. Ward and Joseph M. Ward (wife and husband) was

filed with the Clerk of Superior Court of Pitt County, Greenville, North Carolina. The tax lien would have never been entered if a bank had not made an error indicating that some money taken out of the Wards' IRA account was a taxable withdrawal of IRA funds when it was actually a non-taxable rollover. When the problem had almost been settled with a local IRS Office, the IRS District Office in Nashville, Tennessee, entered the herein referred to tax lien involving the year, 1986. Further, with Joseph M. Ward out of the USA, the IRS sealed all of Patricia B. Ward's and Joseph M. Ward's bank accounts. That horrified Patricia B. Ward and severely aggravated Joseph M. Ward. A lot of effort was required in connection with making arrangements for Patricia B. Ward to have sufficient funds to pay the household expenses. However, the Plaintiffs were able to get the bank accounts re-opened within a few weeks and were able to get the lien released on February 10, 1993, without any payment having ever been made on it. In fact, the Wards received a refund of about $1500 for the contested tax year, 1986. Considering the disruption and agony the entry of the lien had caused, that did

not console them much. But at least the whole mess had come to an end, they thought.

The Wards' confidence and happiness that a very unpleasant experience had come to a conclusion came to an abrupt conclusion in February 2002, after Joseph M. Ward responded to a Discover promotional flyer addressed to him in January 2002, offering 0% interest charges on balance transfers for 9 months, only to have his application for a Discover credit card denied on February 5, 2002 because "LIEN" appeared on a Trans Union consumer report relating primarily to him. Joseph M. Ward was shocked. He requested a Trans Union consumer report. Joseph M. Ward received a copy of a Trans Union Consumer report dated February 12, 2002 before he filed a complaint with Trans Union about the lien. That consumer report indicated that the lien was for $27,174 and had not been released.

In January, 2002, Patricia B. Ward responded to a credit card offer that was almost identical, if not identical, to the one that Discover had extended to Joseph M. Ward. She applied (before Joseph M. Ward had received notice of his denial by Discover). On

March 1, 2002, she received a notice that Discover had turned her credit card application down, citing "Lien" as the cause. The Wards knew that the record of the lien which was on file at the Pitt County, North Carolina Courthouse clearly indicated that the lien was a joint one against Joseph M. Ward and Patricia B. Ward and knew that the only reasonable way to check on the status of the lien concerning which Joseph M. Ward had already complained to Trans Union was to check the docket book in which the lien information was recorded. Clearly, any investigator of reasonable competence should have been able to deduce that Joseph M. Ward and Patricia B. Ward were quite likely husband and wife and that the lien information appearing in his consumer report was quite likely appearing in her consumer report that was on file with Trans Union. For those reasons, Joseph M. Ward elected not to take any further action as to Trans Union at that time.

In a Trans Union consumer disclosure consumer report dated April 12, 2002 and addressed to Joseph M. Ward, Trans Union indicated that it had completed its reinvestigation and deleted the tax lien from his

consumer file. No apology, no indication as to why the lien was being deleted. There was an offer of allowing Joseph M. Ward to add a 100 word consumer statement to his consumer report if Trans Union's investigation had not resolved his dispute. Petitioner Joseph M. Ward believes that the FCRA contains a provision that if the statement a consumer is allowed to enter is limited to 100 words, the consumer reporting agency must offer to furnish the Plaintiff with assistance composing the statement. No such help was ever offered by Trans Union. Further, Trans Union did not fully comply with 15 U.S.C. §1681 (i) (6) (B) (iii), (iv) and (v) concerning notices it was required to give the consumer in connection with resolving information disputes involved in the publication of consumer reports. It is the belief of the Petitioners that the failure of Trans Union to comply with those statutory requirements was the beginning of an effort by Trans Union to hide from Patricia B. Ward, Joseph M. Ward and later from a jury the fact that the public records vendor that tracked the tax lien against the Wards at the Pitt County Courthouse in the early 1990's had employed a severely flawed procedure in

tracking the release of tax liens at that time at that location.

When Joseph M. Ward received his consumer report dated April 12, 2002 which contained the Reinvestigation Results, he and Patricia B. Ward presumed that both of their consumer reports had been corrected. They were not itching for a legal conflict. They decided not to enter a legal action against Trans Union even though they were aware that Trans Union had violated the FCRA by publishing the tax lien information more than seven years after the lien had been satisfied and by failing to indicate that the lien had ever been released as satisfied, making the information inaccurate.

In June, 2003, Patricia B. Ward received a mail solicitation urging her to apply for a UNC Greensboro Alumni Association Platinum Plus Visa credit card marketed by MBNA America. On June 23, 2003, Patricia B. Ward applied for such a credit card by telephone with Joseph M. Ward also taking part in the application process, including the telephone conversation. The person to whom the Wards were talking identified himself as being an MBNA America

agent. Early in the telephone conversation, the MBNA agent inquired about a tax lien appearing on Patricia B. Ward's consumer report. He had accessed Patricia B. Ward's Trans Union consumer report during the telephone conversation and seen the lien information which the Wards presumed to have been removed in the Spring of 2002. No adverse action was detected by the Wards during the telephone conversation. When the conversation ended, it was their belief that the agent understood the absurdity of the lien having ever been entered and that MBNA and the Wards had reached an agreement that a credit line of $28,000 would be transferred from Joseph M. Ward to Patricia B. Ward, (thereby allowing Patricia B. Ward to take advantage of the 0% interest offer for about 9 months that was being used for bait by MBNA in connection with the UNC Greensboro credit card promotion).

On June 24, 2003, a different MBNA agent called the Wards and cancelled the deal that had been made the night before. He identified himself as the supervisor of the MBNA agent who had offered the Wards' the deal described herein. He gave no specific reason for the cancellation. He simply stated that he

disagreed with the decision to issue the credit card. In a letter addressed to Patricia B. Ward dated June 25, 2003, a person who identified himself as Don Hamilton and who described himself as a customer advocate of Trans Union stated that Patricia B. Ward's application for a credit card had been turned down because she had sufficient balances on existing revolving credit lines and sufficient credit available considering her income. No mention of the tax lien appears in the letter.

Petitioner Joseph M. Ward, at this point, must admit that he sometimes is not a very trusting person. Not for one minute did he accept the absence of referral to the tax lien in the mysterious Don Hamilton's letter as indicating the truth as to whether or not the tax lien was a factor in connection with the refusal. Plaintiff Joseph M. Ward, feeling that it is all right to bait people who themselves engage in such tactics, as MBNA had done by offering 0% interest for about 9 months in an effort to get their credit cards in the hands of UNC Greensboro alumni and alumnae, baited Don Hamilton. A consumer advocate has no business trying to hide anything from a consumer to

protect his or her employer, much less to protect another company, such as Trans Union. Regardless of the ranting and raring of the Defendant's counsel in attempting to prejudice the jury by stating that Plaintiff Joseph M. Ward admitted in his deposition that he had baited MBNA, the truth was that the tax lien was a factor in the cancellation of the credit card deal by MBNA as admitted in a letter addressed to Patricia B. Ward by the mysterious Don Hamilton of MBNA on July 22, 2003. That letter, Plaintiff's trial exhibit NO. 17, was written in response to a letter that Patricia B. Ward addressed to Don Hamilton on at MBNA on July 10, 2003, Plaintiff's trial exhibit NO. 16. It is the Petitioners' contention that baited or unbaited, Don Hamilton's letter of July 22, 2003 is more reliable than the testimony of two MBNA agents and a MBNA vice president, all three of whom admitted during depositions that they relied entirely upon computerized notations made by the agents in connection with their telephone conversations with the Wards and with the vice president admitting that she was relying on the agents' notes and that she never even heard of the Ward v. Trans Union case until

about two weeks before her deposition and with both agents admitting that they had no personal recollection of their telephone conversations with the Wards. Plaintiff Joseph M. Ward has long contended that the computer notes made by the agent who talked to the Wards on June 24, 2003 were composed so as to make it appear that the tax lien had nothing to do with his overruling the first agent (the one they talked to on June 23, 2003) when it was actually the principal cause of the cancellation of the agreement made by telephone on June 23, 2003. Why would any MBNA agent do such a thing? Birds of a feather tend to flock together. It is obvious that companies involved in the credit card business and the three major consumer reporting agencies are closely allied.

When Patricia B. Ward received a copy of her Trans Union consumer report dated July 1, 2003, she and her husband found that it contained the same 1st page tax lien information that had been present on the front page of her March 9, 2002 Trans Union consumer report. By that time the Wards had become more consumer report literate. By looking near the back of the report they were able to determine that in addition

to MBNA America on June 23, 2003, five other companies had received her Trans Union consumer report since she had last received a copy of the consumer report dated March 9, 2002. What could not be determined was which of those publications, if any, contained information relating to the Ward's Federal tax lien.

The Wards were still not anxious to enter an action against Trans Union, but they did think that they deserved an apology and some at least modest compensation for the distress that Trans Union and/or one of its subordinate public records vendors had caused them. Trans Union never offered either. That does not surprise Petitioner Joseph M. Ward. While most of the agents of Trans Union he had come to know are polite, courteous and at times helpful, it is his contention that Trans Union policy is to prevail in any court action which arises, regardless of how repugnant the acts and/or omissions of Trans Union were which led to the entry of a legal action against it. Joseph M. Ward has never accused Trans Union of being involved in a conspiracy, but he had contended and continues to contend that Trans Union was and is

involved in an attempt to cover up (hide from the Petitioners, this Court, lower Courts, past and future juries) the fact that during the early 1990's, at courthouses in North Carolina, including the Pitt County Courthouse, Greet America, a public records vendor gathering public records for Trans Union in North Carolina, would once in a while go way back in the docket books searching for the release of liens (which were recorded at the same place in the same docket book in which they had been entered) using a nameless and numberless search and therefore having no information at hand indicating any specific liens that were being tracked. While the Plaintiffs have always referred to that as a cover up, if Greet America Vice President Lyndon Wilson was and/or is involved in an attempt to hide the facts, along with Trans Union, the word "conspiracy" might be more appropriate than "cover up".

By the middle of July, 2003, Patricia B. Ward and Joseph M. Ward, having become a little more consumer report literate, had consumer reports in hand which indicated to them that between January 24, 2002 and June 23, 2003, Trans Union had

published consumer reports (all of which quite probably contained information relating to the Ward's joint tax lien, the publication of which was forbidden pursuant to 15 U.S.C. §1681c(3) prohibiting such publication more than 7 years after satisfaction of a lien) on 10 occasions, 3 of those being primarily related to Joseph M. Ward and 7 being primarily related to Patricia B. Ward. The Wards had also learned that each of the 10 publications which probably contained information relating to the tax lien probably contained no statement indicating that the lien had ever been released as satisfied, when it had been released in 1993, thereby creating a false derogatory impression upon any reader of the tax lien information and indicating that Trans Union had probably violated 15 U.S.C. §1681e(a) and/or (b). However, the Wards did not learn for a fact that all 10 of the involved consumer reports that were published by Trans Union contained identical tax lien information and therefore all ten were clearly in violation of §1681e(a) and/or (b) until May 27, 2005 when Defendant Trans Union served its Answer to Interrogatory No. 2 of Plaintiff Joseph M. Ward's First Set of Interrogatories upon the Plaintiffs.

(Plaintiffs' Trial Exhibit N. 44.) The Petitioners contend that May 27, 2007 set the clock in motion employing the newer version of the FCRA statute of limitations as to the publication of a consumer report containing the faulty tax lien information and relating primarily to Joseph M. Ward to Capital One Bank by Trans Union on April 5, 2002. While it is conceivable that Plaintiff Joseph M. Ward could have learned of the April 5, 2002 publication of a consumer report relating to him on about April 12, 2002 when Trans Union addressed its Investigation Results to him, he contends that he could not have learned whether or not the publication contained any of the tax lien information from that source and further contends that he never saw the information in the back of the Investigation Results consumer report dated April 12, 2002 until many months later when he had become more consumer report literate. Further, for the reasons set out hereinabove, he could not have learned conclusively that the April 5, 2002 Trans Union consumer report relating primarily to Joseph M. Ward contained any information relating to the tax lien until May 27, 2005, as indicated hereinbefore.

After the Wards received a copy of a Trans Union consumer report relating primarily to Patricia B. Ward dated July 1, 2003 with that consumer report containing the same faulty tax lien information that was contained in the Trans Union consumer report which was published to Joseph M. Ward on March 11, 2002, Trans Union apparently initiated an investigation. At the beginning of a consumer report relating primarily to Patricia B. Ward and dated October 2, 2003, appears a section headed INVESTIGATION RESULTS. That section lists lien information with the result being DELETED plus a notation that Patricia Ward could add a statement if the investigation had failed to resolve Patricia B. Ward's dispute, but failed to note that the FCRA statutorily required such notification and also required notification that Trans Union would assist the consumer if Trans Union limited such statement to 100 words. Buried in the back of the consumer report, far away from the "INVESTIGATION RESULTS" section, is the following notation: "- - - - - - - -. You may also request a description of how the investigation was conducted along with the name, address and

telephone number of anyone contacted for information." There is no mention that 15 U.S.C. 1681i(6)(B)(iii) et (iv) require Trans Union to furnish that information to Patricia B. Ward (or her Estate) upon proper request. It also does not mention that Section 1681i(7) requires a consumer reporting agency to provide a consumer with a description of the re-investigation procedures employed in order to determine the accuracy of the information (in dispute) including the business name and address of any furnisher of information contacted in connection with such information relating to the accuracy, completeness of the provider of the information mandated by §1681i(6)(B)(iii), within 15 days after request by a consumer.

The Wards thought long and hard before deciding to enter an Action against Trans Union. They deliberately ignored a statute of limitations elimination of some possible claim counts. Finally, on June 21, 2004, they filed a Complaint in the District Court for the Eastern District of NC alleging multiple counts of violation of 15 U.S.C. 1681c and of §1681e(a) and (b), a State false defamation claim and a State

interference with contract claim (which should have been filed as an interference with prospective advantage claim).

Discovery was somewhat bumpy. The Plaintiffs soon concluded that the Defendant's Counsel did not want the Plaintiffs to discover how Trans Union or an agent of Trans Union had tracked liens at the Pitt County Courthouse in the early 1990's. The Wards made several trips to the Pitt County Courthouse and learned that when a docket book was opened to a particular location the entry of a lien was entered on the left hand leaf. If the lien had been released, that was recorded at the same place in the docket book on the right hand leaf. Obviously, one needs names and/or numbers to conduct a reasonable search for the release of lien at a courthouse using such a system. The Petitioners contend that until the present time, the Defendant has tried to hide the fact that the public records vendors who tracked liens for Trans Union at the Pitt County Courthouse in the early 1990's employed such nameless and numberless lien searches by occasionally going way back in docket books searching for lien releases. Being able to keep the

evidence that such nameless, numberless searches were actually used by the public records vendors with whom Trans Union had contracts in North Carolina in the early 1990's hidden is at the core of the Defendant's up to now successful defense in this action.

The Defendant during discovery admitted that Trans Union had published consumer reports relating to Patricia B. Ward on 7 occasions and on Joseph M. Ward on 3 occasions. Plaintiff Estate of Patricia B. Ward had 6 viable claims for violation of 15 U.S.C. 1681c and 6 viable claims for violation of §1681e(b). Considering the fact that the Defendant's Answer to Interrogatory No. 2 of Joseph M. Ward's First Set of Interrogatories had been admitted into evidence as part of Plaintiff Estate of Patricia B. Ward's Trial Exhibit P 44 (answers to all of the interrogatories submitted to the Defendant by the Plaintiffs indicating that on 10 occasions Trans Union had published tax lien information to users more than 7 years after the lien was released, did the District Court commit reversible error by instructing the jury that to establish a cause for action the Plaintiff had to show

that Trans Union reported a tax lien in a consumer report relating to Patricia B. Ward more than 7 years after the lien had been satisfied instead of the Court ruling that the Plaintiff's contention that such publications had occurred was an established fact?

Did the District Court commit reversible error by not informing the jury that reporting of a tax lien more than 7 years after it is released in itself offers evidence in support of a violation of 15 U.S.C. §1681 e(b) as well evidence of a violation of § 1681c? In Philbin v. Trans Union 101 F.3d 957 at 964-965, (3rd Cir.1996), the Court presents a thoughtful evaluation of the divergence of Courts that have given serious consideration:

> "....to the nature and quantum of proof, if any, beyond the mere fact of an inaccuracy, that a plaintiff must provide in order for a reasonable tryer of fact to conclude that reasonable procedures were not followed. ----------Thus we conclude that a plaintiff must minimally present some evidence from which a trier of fact can infer that the consumer reporting agency

failed to follow reasonable procedures in preparing a credit report".

Stewart v. Credit Bureau 734 F.2d 47 51 (D.C. Cir. 1984 takes a different view. In that case the Court of Appeals noted that although it was unaware of any cases directly addressing who has the burden of proving reasonableness of procedures, courts have generally assumed that the burden falls on the Plaintiff. However, the Court in Guimond v. Trans Union Information Company 45 F.3d §1329 1333 (9th. Cir. 1995) states: "In order to make out a prima facie violation under §1681 e (b), a consumer must present evidence tending to show that a credit reporting agency prepared a report containing inaccurate information.", as does Calin v. General Motors Acceptance Corporation, 936 F.2d 1151, 1156 (11th Cir. 1991) which is cited in Guimond, supra. The Petitioners respectfully submit that it is clear that the Defendant and Plaintiff Patricia B. Ward share the responsibility as to the proof of whether or not the erroneous information contained in Patricia B. Ward's consumer reports was there because of negligence on the part of Trans Union and/or any Trans Union

Associate or not. Stewart, supra at 51, held that a plaintiff cannot rest on a showing of a mere inaccuracy, shifting to the defendant the burden of proof on the reasonableness of procedures for ensuring accuracy. However, Stewart went on to hold that, in order to satisfy this "minimal [ ]" burden, "a plaintiff need not introduce direct evidence of unreasonableness of procedures: in certain instances inaccurate credit reports by themselves can fairly be read as evidencing unreasonable procedures, and ....in such instances plaintiff's failure to present direct evidence will not be fatal to his claim." Id at 51-52.

The Petitioners respectfully submit that it is their contention that Defendant Trans Union and Plaintiff Estate of Patricia B. Ward should have shared the responsibility as to the proof of whether or not the faulty information relating to the tax lien which appeared in her consumer reports was there because of negligence on the part of Trans Union and/or any Trans Union associate.

In Plaintiffs' Memorandum of Authorities pursuant to Local Rule 39.1 of the Federal Rules of Civil Procedure prepared shortly before the trial and

filed in this Action on August 18, 2007, the Plaintiffs addressed the conflicts related to the burden of proof of negligence cited herein above, citing Philbin, supra, Stewart, supra, Guimond, supra, and Calin, supra to point out the different positions as to who has to prove what and the amount of evidence required for proof. Trans Union, in its Memorandum of Authorities prepared in anticipation of the trial and filed on August 20, 2007, contends that all of the responsibility for the proof of negligence fell upon Plaintiff Estate of Patricia B. Ward and even went so far as to state that Guimond, supra, supported that contention. In Trans Union LLC's Proposed Jury Instructions filed in this Action on August 20, 2007, Trans Union again contended that all of the burden of proof related to negligence fell upon Estate of Patricia B. Ward. In presenting the Defendant's Motion for Judgment As A Matter Law at the close of the Plaintiff' evidence, the Defendant again contended that the Plaintiff bore all of the burden in connection with the proof of negligence issue (which had been clearly raised in the Plaintiff's Memorandum of Authorities as described on Page 26 in herein. The Defendant has taken the

position of Dalton v. Capital, 257 F.3d 409 416 (4th Cir. 2001) which cites Stewart, supra, as to a plaintiff's need to come forth with evidence which shows that a Defendant did not maintain reasonable procedures, when the real issue is upon whom does the burden of the proof of the presence or absence of negligence lie? There are plenty of other failures which constitute negligence in addition to the maintenance of reasonable procedures. For example, if reasonable procedures were in place, were they followed? Who bears the responsibility of proving that?

When the Plaintiff rested its case, the Defendant's Counsel renewed his Rule 50 Motion and reargued his contention that the Plaintiff failed to carry its burden of proof to show unreasonable procedures as to all of the claims.

During closing argument, the Defendant's Counsel again argued that the burden of proof of unreasonable procedures was upon the Plaintiff.

During the jury charge, the Court placed all of the burden of proof upon the Plaintiff. That came as no surprise in view of the information detailed about negligence hereinabove.

Before or during discovery in this Action, did the Defendant's Counsel become aware that Trans Union Vice President William Stockdale had known Greet America CEO David Abright and Greet America Public Record Services Vice President Lyndon Wilson well since the late 1980's and had worked closely with them in connection with the tracking of liens in the Southeast, including North Carolina in the late 1980's and early 1990's, according to Stockdale's testimony at the trial? Why did Trans Union Counsel, in connection with Trans Union in 3 separate responses to Interrogatories 1 and 2 of Plaintiff's First Set of Interrogatories searching for how liens were tracked and who had that information never come forth with the procedure employed and never identify Stockdale or Wilson as being someone who was likely to know the procedures employed in North Carolina in the early 1990's, keeping in mind the above described relationship between Stockdale and Wilson during that period?

FN1: At his Deposition Greet America Vice President Lyndon Wilson testified that during the period that BRC owned the Public Records Section (that had previously and later been owned by

Greet America, Inc.,) during the early 1990s, he continued to supervise the gathering of public records (for BAC).

The correspondence between Joseph M. Ward and Greet America President David Abright, which the Trial Court refused to admit as exhibits and copies of which appear on pages App. 54-61, clearly support the Petitioners' contention that Greet America was conducting nameless and numberless searches for lien releases in North Carolina Courthouses in the early 1990's by occasionally "going way back" in the docket books searching for liens which had been released since the previous such check. After the Plaintiffs discovered Greet America Public Records Service Inc. Vice President Lyndon Wilson without any significant help from the Defendant and after the Plaintiff had heard his version of the procedures employed by Greet America in tracking the entry and release of liens at North Carolina courthouses in the early 1990's and after the Plaintiffs had concluded that those procedures were grossly deficient, when the Plaintiffs served a subpoena for a de bene esse deposition of Lyndon Wilson why did the Defendant's counsel file a motion seeking to quash the planned deposition, unless

he was seeking to hide some information known by Wilson, an agent of Trans Union in the early 1990's (and ??? currently) from the Plaintiffs?

After having succeeded in getting the District Court to enter an Order greatly restricting the matters the Plaintiffs could inquire about during the de bene esse deposition of Lyndon Wilson (limited to his past work history, confirming, denying or clarifying his alleged telephonic statements to Plaintiff Joseph M. Ward concerning Wilson's understanding of the process by which the tax lien information was compiled in North Carolina in the 1990's and personal knowledge of any aspect of Patricia B. Ward's credit report), did Lyndon Wilson and Trans Union's Counsel attempt to make a mockery of the deposition after Joseph M. Ward had traveled from North Carolina to Texas to take it, and did they have considerable success in doing so?

Did the redactions of Lyndon Wilson's de bene esse deposition by the District Court further harm the deposition of Lyndon Wilson, thereby making it almost useless in supporting the Plaintiff's contentions as to what Plaintiff Joseph M. Ward had learned from

Lyndon Wilson, during telephone conversations, about the procedures employed by Greet America in gathering information regarding the entry and release of tax liens at North Carolina courthouses in the early 1990's?

Why did the Defendant's Counsel want essentially the entire deposition of Lyndon Wilson stricken from use at the trial? Was that part of a continuing effort to cover up the procedures utilized by Greet America at the Pitt County Courthouse?

Why did Plaintiff Joseph M. Ward get no response when he called and left a message on Greet America Vice President Lyndon Wilson's answering machine, offering to pay Wilson's expenses if he would come to North Carolina from Texas to testify at the trial in this Action?

If the Defendant's Counsel learned about this Court's ruling in Safeco Insurance Co. of America v. Burr 12 S.Ct.2201 (decided on June 4, 2007) before the trial in this Action ended on August 30, 2007, did Counsel have a duty to inform the District Court that the standard for willfulness set out in Safeco was different from the one applied in entering

interrolocutory summary judgments in favor of Defendant Trans Union as to Defendant Patricia B. Ward's claims for willful violation of Section 1681e(b) and Section 1681c of the FCRA on August 23, 2006 (with Plaintiff Joseph M. Ward's willful claims having been eliminated earlier through the statute of limitations)?

Is it reasonable to believe that some Trans Union Counsel did not learn before the trial in this Action, that the requirement that a violation had to be carried out knowingly in some Circuits, including the 4th Circuit, to maintain a willful claim, had been eliminated by the Supreme Court's ruling in Safeco, supra?

If the District Court learned, before entry of the final judgment by the Clerk, that the standard for willful violations of the FCRA that the District Court had relied upon in entering interlocutory summary judgment in favor of the Defendant in this Action had been changed, should the Court have taken some action regarding that matter?

Why did the Defendant's Counsel file a proposed jury instruction on August 20, 2007 regarding the

proof of emotional distress under the FCRA, with that proposed instruction being fairly mild, and on the same date file a Memorandum Of Authorities contending that a consumer must offer evidence with a degree of specification which includes corroborating testimony or medical or psychological evidence in support, with both citing Cousin v. Trans Union Corp. 246 F.3d 359 at 3 1 (5th Cir. 2001)?

Why did the Defendants, at Page 6 of their herein cited Memorandum Of Authorities, claim that Cousin, supra, at 371, requires that a consumer must offer evidence with a degree of specificity that includes "corroborating testimony of medical or psychological evidence support" in order to maintain a claim for mental or emotional distress, when Cousin, supra at 371, states that Cary v. Pipus 435 U.S. 247, 98 S. Ct. 1042 1052 (1972), a 42 U.S.C. §1983 case, is quoted as requiring "a degree of specificity which may include corroborating testimony or medical or psychological evidence in support of the damage award" citing Paterson v. P.H.P. Health Insurance Corp. 90 F.3d 927, 938 (5th Cir, 1996), a case concerning claims for racial discrimination and retaliatory discharge when

Cousin does not extend those rulings to FCRA cases? (Emphasis added) More importantly, how did the - - - - - - - - "must have offered some of independent, corroborating evidence that Patricia B. Ward suffered emotional distress, such as evidence of her conduct and the observations of others' come to be included in the jury instructions relying on the herein 5th Circuit citations when 4th Circuit cases going back at least to Price v. City of Charlotte, 93 F.3d 1241 1250 (4th Cir1996) have recognized that a plaintiff's testimony can provide sufficient evidence to support an emotional distress award, provided that the plaintiff meets the 4thCircuit requirement that a plaintiff "reasonably and sufficiently explain the circumstances of [the] injury and not resort to conclusionary statements"? Id at 1251. The 4th Circuit reaffirmed that ruling as recently as in Sloane, v. Equifax Information Services, LLC 510 F.3d 495 503 (4th Cir. Dec. 2007).

Appearing Pro Se at the Trial shortly after having lost his wife and shortly after having been deserted by his Counsel because the Counsel wanted nothing to do with Plaintiff Joseph M. Ward's contention that Trans Union was engaged in cover up

of information relating to the gathering of information relating to the release of tax liens at the Pitt County, North Carolina Courthouse and burdened with trying to prosecute Plaintiff Estate of Patricia B. Ward's case and suffering from a significant hearing loss which he had been unable to adequately correct with hearing aids, Plaintiff Joseph M. Ward failed to understand that the Court had switched from the mild jury instruction contained in the Defendant's proposed jury instructions to the actual jury instruction requiring corroborating evidence of emotional damages without the Plaintiff realizing that the change had been made until long after the trial had ended. However, as stated elsewhere in this Petition, Plaintiff Joseph M. Ward had stated on Page 13 of the Plaintiffs; Memorandum of Authorities pursuant to Local Rule 39.1 of the Federal Rules of Civil Procedure, that the Plaintiffs relied upon Lawrence, v. Trans Union, 296F.3d 582 588 (E.D. Pa. 2001) to support its contention that it was not necessary to state emotional damages of humiliation and embarrassment with a great degree of particularity with Lawrence citing

Philbin v. Trans Union 101 F.3d 957 963 n.3 (3rd. Cir. 1996). as supporting that.

The fact that the Defendant filed its proposed jury instructions containing a mild requirement for emotional damages and its Trial Brief containing much more stringent requirements for proof on the same date, August 20, 2007 with both being signed by Trans Union Counsel Joseph Williford is shocking enough. Add to that Counsel Williford's FRCA Rule 50 Motion in which he stated:

"And I will concede, as best as I can tell there is no particular law in the Fourth Circuit with respect to emotional distress. In Sloane supra, the Court clarifies the position of the 4th Circuit as not requiring any corroborating evidence or medical or psychological evidence to support an award for emotional damages, going back as at least to 1994. Based on the ruling in Sloane, supra, it appears the 4th Circuit uses the same standard of proof of emotional damages in FCRA cases that it does in other cases.

With it being well established as a fact that emotional stress can aggravate arterial hypertension and well established that arterial hypertension is a

contributing factor to cerebral hemorrhage in numerous cases, should the trial court have admitted medical records of Plaintiff Patricia B. Ward, including her death certificate, which clearly show that she had been under treatment for arterial hypertension for many years and which clearly show that the cause of death was a massive cerebral hemorrhage? Under such circumstances, is it reasonable to be required to go to the expense and inconvenience of bringing in an expert to testify as a requirement for the admission of health records including the death certificate, keeping in mind that no expert witness testimony is required to maintain a claim for emotional distress and keeping in mind that her death occurred on April 3, 2007 with the trial occurring in late August, 2007?

After having attempted and apparently having succeeded in misleading the Court as to the 4th Circuit standard for proving emotional distress, was it appropriate for the Defense Counsel to inform the jury that the Court was going to instruct it that the Plaintiff must offer some form of independent corroborating evidence that Plaintiff Patricia B. Ward

suffered emotional distress? See Trial Transcript p. 464.

If the District Court is aware that the Defendant's Counsel misled the Court as to the evidence required to prove emotional distress in connection with an FCRA claim, should the District Court come forth to express its disapproval of tactics employed by the Defendant?

Considering the fact that Petitioner Joseph M. Ward has a major loss of hearing related to mortar shells exploding very near him during a rescue mission he volunteered to lead in front of the main line in Korea while serving as a battalion surgeon with the 1st Marine Division and considering the fact that his attorney in this Action deserted him shortly before the trial because Plaintiff Joseph M. Ward wanted him to address the evidence which indicated that a cover up of the procedures employed in collecting tax lien releases at the Pitt County Courthouse in the early 1990's by some Trans Union agent(s) was probably in place and considering the load placed on Joseph M. Ward by having to perform paperwork chores at the trial, does it really come as any surprise that the Defendant's

Counsel was able to mislead the Court into adding a statement to the jury instructions erroneously (?falsely) indicating that some corroborating evidence must be included in order to prove emotional distress?

Keeping in mind the fact that the final version of the jury instructions was not made available to Plaintiff Joseph M. Ward until a few minutes before the charge took place and keeping in mind his hearing defect, does it come as a surprise the fact that Joseph M. Ward did not learn until long after the trial ended that the erroneous instruction that some corroborating evidence must be included in order to prove emotional distress had been included in the jury charge?

Keeping in mind the fact that Joseph M. Ward's letter addressed to Greet America CEO David Abright on July 2, 2006 clearly sought to verify his understanding of procedures employed by Greet America in gathering and transmitting tax lien data at the Pitt County Courthouse in the early 1990's and in view of the fact that Greet America CEO David Abright, the owner of Greet America Public Records Service, which gathered the information relating to tax liens at North Carolina during the early 1990's,

addressed a response to that letter to Joseph M. Ward dated August 1, 2006 and in response stated: "You have accurately described the Pitt County North Carolina procedures on satisfied liens that were in place in the early 1990's", did the District Court commit reversible error by refusing to admit those two letters into evidence as Plaintiff's exhibits at the trial (a copy of Joseph M. Ward's letter and the original of David Abright's letter constitute App. 54-61)?

Keeping in mind Plaintiff Joseph M. Ward's contention that he does not recall having ever seen a consumer report until about February 12, 2002 when Trans Union supplied one relating to him at his request and considering the fact that the information indicating that Trans Union had published a consumer report relating to Joseph M. Ward to Capital One on April 5, 2002 was buried deep in the Investigation Results Trans Union Consumer Report dated April 12, 2002 relating to Joseph M. Ward, is it unreasonable to accept Plaintiff Joseph M. Ward's contention that he did not discover that the April 5, 2002 publication to Capital One had occurred until many months later and did not learn for a fact that the involved consumer

report contained any information relating to the tax lien (when it actually contained information falsely indicating that the lien had never been released) until May 27, 2005 when the Defendant's Council served the Defendant's answer to Interrogatory No. 2 of Plaintiff Joseph M. Ward's First Set of Interrogatories, should Plaintiff Joseph M. Ward's claims related to the April 5, 2005 publication of tax lien information to Capital One (Transaction 8) have been allowed to survive under the newer version of the FCRA statute of limitations (which can be applied to claims arising after March 31, 2002) or under the old version because of the attempts of the Defendant to hide the fact that Trans Union had published information relating to the tax lien to Capital One?

With it being well established that the Plaintiffs' owed no Federal taxes for the year 1986 when the tax lien contending that they owed $27,174.39 for taxes and penalties for that year was entered and notice of the lien was filed at the Pitt County North Carolina Courthouse and with the Plaintiffs never paying even a penny of that lien (and receiving a refund of about $1500 for the involved year, 1986) was it appropriate

for the Defendant's Counsel, during closing argument, to contend that: "- - - - - - the tax lien itself was the problem for her, and that was a fact. That had nothing to do with Trans Union. She had the tax lien. - - - - "without conceding that the entry of the tax lien turned out to have been unjustified?

Did the District Court commit error when it refused to allow Joseph M. Ward to testify concerning the faulty solution Greet America applied in an effort to overcome a problem tracking the release of liens which was created by the system of entering the release of a lien at the Pitt County North Carolina Courthouse at the same place in the same docket book in which the entry of the lien was recorded at the Pitt County Courthouse in the early 1990's?

Has the time come when North Carolina's Survival Statute, NC Gen. Statute 28A-18-1 should be declared unconstitutional because it does not provide due process and equal protection under the laws, pursuant to the 5th and 14th Amendments to the United States Constitution?

FN2: In District Court Order DE 99 at Page 16, the Court found that a libel per se statement is a publication in

writing a false statement which charges a plaintiff with a crime involving moral turpitude, impeaches him or her trade or business or accuses him or her of having a loathsome disease. The Court failed to include the fourth type of false statement which is actionable as libel per se under North Carolina law, that being one that otherwise tends to subject one to contempt, ridicule or disgrace. Renwick v. News and Observer, 310 N.C. 312, 317 (NC Supreme Court 1984). Further, the District Court ruled that FCRA Section 1681h(e) preempted the Plaintiffs' false defamation claims because the Plaintiffs did not raise a genuine issue as to whether the Defendant acted with malice or willfulness. Section 1681h(e) provides protection for a consumer reporting agency when a user (such as MBNA) reports to a consumer, after taking adverse action against that consumer, that the adverse action was based partly on information contained in a consumer report relating to that consumer. In Ward v. Trans Union, in connection with Transaction 7, the MBNA representative on the telephone on June 23, 2003 indicated that he had accessed a consumer report and seen the tax lien information during the telephone conversation. He indicated no adverse action on it at any time during that telephone conversation. (It was much later that the tax lien was conceded to have been a factor in connection with Patricia B. Ward having been turned down for an MBNA credit card.) The Petitioners contend that Trans Union was not under the protection of Section 1681h(e) when MBNA revealed that it had learned about the tax lien by accessing a (Trans Union) consumer report relating primarily to Patricia B. Ward early during the telephone conversation.

Did the District Court fail to recognize that under North Carolina law, a claim for interference with prospective advantage or interference with a prospective contract should be recognized when no contract actually exists at the time the interference occurs? (See DE 99 Order at Page 17).

With an unauthorized signature being present on an answer to an amended complaint, (signed by someone who was not an attorney of record making it, in effect, the same as being unsigned) and with Rule 11(a) of the Federal Rules of Civil Procedure stating that an unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party and with the attorney taking 58 days after being notified to make the correction, was the District Court's ruling that the signing error was promptly corrected in error?

When the Plaintiffs and the Defendant, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, entered a written agreement that the Plaintiffs would have until April 15, 2005 to file an

Amended Complaint and the Defendant would have until April 22, 2005 to file an Amended Answer to that Amended Complaint and Defendant did not file such Answer until April 28, 2005, did the 10 days after service of the complaint allowed for service of an amended answer under Rule 15(a) supercede the written agreement that the Amended Answer would be filed by April 22, 2005, thereby making the April 28, 2005 filing of the Amended Answer timely?

FN 3: The Petitioners do not contend that the District Court or the Fourth Circuit Court of Appeals intentionally carried out any violation of the Plaintiffs' rights, if in fact, either or both of those courts committed errors that violated any of the Plaintiffs' rights. The Petitioners fully understand that having to deal directly with an elderly legal layman with a major hearing defect places a heavy burden upon the Courts and upon the Defendant's Counsel. If this Court decides that the issues involved in trying to ensure that justice and fairness to consumers while protecting the legitimate need of business merits the attention of the Court from time to time, the Petitioners contend that this case is a good one for review. If the Court decides to hear this case, the Petitioners will try very hard to obtain legal counsel to argue the case for them, but the fact that the Petitioners are not wealthy must be kept in mind.

FN4: The Petitioners take this opportunity to thank this Court and those employees in the Clerk's Office who have assisted in connection with the preparation of this document. The service and politeness in the Clerk's office has been outstanding.

REASONS FOR GRANTING THE WRIT

1. Overview.

The Petitioners respectfully submit that the variations in the standards being utilized as to the proof of negligence in FCRA cases the various Circuits of the Federal Court System need to be eliminated. The varying standards of proof of emotional distress in FCRA Cases also need to be standardized. Further, the date that the new standard for the proof of willfulness set out in Safeco, supra, became effective as to Actions in progress at the time of that decision needs clarification.

II. Constitutional Rights

The Petitioners respectfully submit that some of the obstacles that have been placed in their path during the course of this action and which have been described herein this Petition violate their rights to

due process and equal protection under the laws, pursuant to the 5th and/or 14th Amendments of the United States Constitution.

III. Importance of the Issues.

Trans Union claims that it is monitoring about 2,000,000,000 consumer transactions a month. If such a volume of legalized intrusion into the privacy of millions of consumers is to be continued as being necessary, it should be carried out with diligence and integrity on the part of consumer reporting agencies and on the part of their agents and subscribers. Trans Union came up short on diligence in tracking the lien release that led to this action and it engaged in a defense more suitable for a defendant accused of a serious crime rather than a civil law violation.

CONCLUSION

The Petitioners pray the Court:

a. To grant a writ of certiorari.

b. To vacate the judgment of the 4th Circuit Court of Appeals filed in this Action on February 17, 2009.

c. To vacate the Judgment filed in this action in the District Court on August 30 2007 and to have the Circuit Court return this Action to the District Court with an instruction that Discovery be reopened in order for the Plaintiffs to take a less restricted deposition of Greet America Vice President Lyndon Wilson and a deposition of Greet America CEO David Abright related to their recollections as to how tax lien information was gathered at the Pitt County Courthouse by Greet America in the early 1990s and how that information was transmitted to Trans Union.

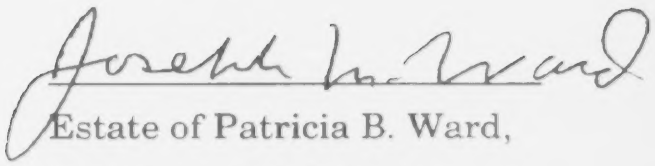
d. To vacate the interlocutory summary judgments that were entered in the District Court in this Action requiring that a recklessly negligent violation of the FCRA had to be knowingly committed in order for a violation to be willful.

e. To establish a single standard for the proof of emotional distress in all FCRA cases in all Federal Circuits.

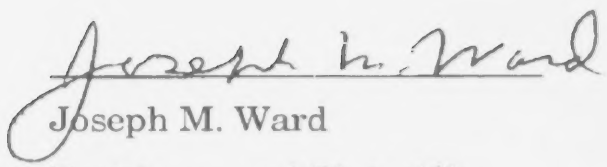
f. To establish a single standard for the burden of proof and the amount of evidence necessary to prove or disprove that a violation of the FCRA was due to negligence.

g. For such other relief which the Court deems just and proper.

Respectfully submitted, this the 19th day of June, 2009.



Estate of Patricia B. Ward,
Petitioner and Plaintiff
By Joseph M. Ward
Personal Representative
209 Manatee Street
Cape Carteret, NC 28584
Telephone: 252-393-6150



Joseph M. Ward
Petitioner and Plaintiff

Filed February 17, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1971
(4:04-cv-00088-DAN)

THE ESTATE OF PATRICIA BLALOCK WARD; JOSEPH M. WARD,
Plaintiffs – Appellants

v.

TRANS UNION CORPORATION,

Defendant – Appellee

J U D G M E N T

In accordance with the decision of this Court, the judgment of the District Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Filed March 23, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1971
(4:04-cv-00088-DAN)

THE ESTATE OF PATRICIA BLALOCK WARD; JOSEPH M. WARD,

Plaintiffs – Appellants

v.

TRANS UNION CORPORATION,

Defendant – Appellee

O R D E R

The Court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson,
Judge Niemeyer, and Judge Shedd.

For the Court
/s/ Patricia S. Connor, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

Estate of Patricia B. Ward, JUDGMENT IN A CIVIL
Plaintiff, CASE NO: 4:04-CV-88-DAN

v.

Trans Union Corporation,
Defendant.

____x__ Jury Verdict.This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_____ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED plaintiff shall have and recover nothing of the defendant.

SO ORDERED – s/David W. Daniel, United States Magistrate Judge.

This Judgment filed and entered on August 30, 2007, and copies mailed to:

Joseph M. Ward
209 Manatee Street
Cape Carteret, NC 28584

Joseph W. Williford
PO Box 31627

Raleigh, NC 27622-1627
Electronically served

August 30, 2007
Date

Dennis P. Iavarone
Clerk, U.S. District Court

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No. 4:04-CV-88

PATRICIA B. WARD,
JOSEPH M. WARD,
Plaintiffs

v. ORDER

TRANS UNION CORPORATION,
Defendant

This matter is before the court on Defendant's Motion to Dismiss Plaintiffs' false light invasion of privacy claim and on several motions by pro se Plaintiffs for relief due to alleged procedural inadequacies of Defendant's Answer to Plaintiff's Second Amended Complaint and Defendant's Motion to Dismiss. The parties have responded, and this matter is now ripe for disposition.

1. PROCEDURAL HISTORY

Plaintiffs Patricia B. Ward and Joseph M. Ward initiated this action on June 21, 2004, asserting claims of defamation and interference of contract, and alleging violations of the Fair Credit Reporting Act against Defendant Trans Union Corporation. Plaintiffs subsequently amended their Complaint on August 26, 2004 to clarify Defendant's name [DE-3]

and on September 28, 2004, Defendant filed an Answer to Plaintiffs' Complaint [DE-4]. Plaintiffs again amended their Complaint on April 15, 2005 to add a claim of false light invasion of privacy [DE-11]. Defendants filed an Answer to Plaintiffs' Second Amended Complaint [DE-14] and a Motion to Dismiss the false light invasion of privacy claim on April 28, 2005 [DE-12].

Next, Plaintiffs filed a series of motions highlighting alleged procedural deficiencies of Defendant's Answer to Plaintiffs' Second Amended Complaint and Defendant's Motion to Dismiss. First, Plaintiffs filed a "Motion that the Clerk Enter Defendant Trans Union's Default," [DE-15] arguing that Defendant's Answer to Plaintiffs' Second Amended Complaint was untimely and seeking appropriate relief. Plaintiffs' subsequently withdrew this motion [DE-18]. Second, on May 17, 2005, Plaintiffs filed a "Motion that Defendant Trans Union's Answer to Plaintiffs' (Second) Amended Complaint be Declared to Have Been Filed Late Making it Null and Void" [DE-20], again arguing that Defendant's Answer was untimely. Defendant responded on June 3, 2005 [DE-23]. Third, on June 7, 2005, Plaintiffs' filed a Motion to Strike Defendant's Answer to Plaintiffs' Second Amended Complaint and Defendant's Motion to Dismiss for failure to be properly signed [De-24]. That same day, Plaintiff responded to Defendant's Motion to Dismiss on June 29, 2005 [DE-32] and Plaintiffs have replied [DE-37]. Fourth, on July 12, 2005, Plaintiffs filed a Motion to Strike Defendant's Answer to Plaintiffs' Second Amended Complaint, again arguing that the Answer was not properly signed by the attorney of record [DE-35].

II. MOTIONS TO STRIKE

Plaintiffs contend that Defendant's Answer to the Second Amended Complaint, filed on April 28, 2005, was untimely and should be stricken. To support this argument, Plaintiffs assert that the parties entered into an agreement whereby Plaintiffs would file and amended complaint by April 15, 2005 and Defendant would have until April 22, 2005 to file an answer. Defendant argues that the Answer was timely and asserts that the deadline for filing was April 29, 2005.

Rule 15 of the Federal Rules of Civil Procedure provides, "A party shall plead in response to an amended pleading within . . . 10 days after service of the amended pleading. . . unless the court otherwise orders." Fed. R. Civ. P. 15 Plaintiff's Second Amended Complaint was served on Thursday, April 14, 2005, but it had yet to be accepted by the Court when it was served. Thus, the trigger starting the ten day period was the date the court accepted the document and entered it into the docket, April 15, 2005. The deadline for Defendant's response was April 29, 2005, ten days after April 15, 2005, excluding weekends. *See* Fed. R. Civ. P. 6(a). Defendant's response was timely, as it was filed prior to the April 29 deadline. Accordingly, Plaintiffs' motions to strike Defendant's Answer as untimely are DENIED.

Plaintiffs also argue that Defendant's Answer to Plaintiffs' Second Amended Complaint and Defendant's Motion to Dismiss should be stricken for failure to be signed by counsel of record. Federal Rule of Civil Procedure 11(a) provides "[e]very pleading, written motion, and other paper shall be signed....An

unsigned paper shall be stricken *unless* omission of the signature is *corrected promptly* after being called to the attention of the attorney or party." Fed. R. Civ. P. 11(a) (emphasis added). Here, the documents in question contain the contact information of Joseph W. Williford, the attorney of record, but are signed by attorney Glenn C. Raynor who indicated that he signed "for" Williford. On June 29, 2005, upon notice of this alleged error, Defendant filed copies of the Motion to Dismiss [DE-30] and Answer to Plaintiffs' Second Amended Complaint [DE-29] properly signed by Williford.

Even if the initial signatures on the Motion to Dismiss and Answer to Plaintiffs' Second Amended Complaint were invalid, the error was promptly corrected as required by Rule 11(a). Accordingly, Plaintiff's motions to strike the Answer to Plaintiffs' Second Amended Complaint and Motion to Dismiss are DENIED.

III. MOTION TO DISMISS

Plaintiffs have asserted a claim of false light invasion of privacy pursuant to North Carolina law. Defendants correctly argue that this claim is without merit, as North Carolina does not recognize a cause of action for false light invasion of privacy. *Broughton v. McClatchy Newspapers Inc.*, 588 S.E.2d 20, 29 (N.C.App.2003)(citing *Renwick v. News & Observer Pub. Co.*, 312 S.E.2d 405, 410-11 (N.C. 1984)). Defendant's Motion to Dismiss Plaintiffs' claim of false light invasion of privacy is ALLOWED.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' "Motion that Defendant Trans Union's Answer to Plaintiffs' (Second) Amended Complaint be Declared to Have Been Filed Late Making it Null and Void" [DE-20], Motion to Strike Defendant's Answer to Plaintiffs' Second Amended Complaint and Motion to Dismiss [DE-24], and Motion to Strike Defendant's Answer to Plaintiffs' Second Amended Complaint [DE-35] are DENIED.

Defendant's Motion to Dismiss [DE-12] Plaintiffs' false light invasion of privacy claim is ALLOWED.

SO ORDERED.

This the 10th day of November, 2005.

James C. Fox
Senior United States District Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No. 4:04-CV-88

PATRICIA B. WARD, JOSEPH M. WARD, Plaintiffs, v. TRANS UNION CORPORATION, Defendant	)))))))))	ORDER

This matter is before the court upon several motions by the parties. These matters are now ripe for disposition.

1. STATEMENT OF THE CASE

Plaintiffs Patricia B. Ward and Joseph M. Ward initiated this action on June 21, 2004, asserting claims of: (1) violations of the Fair Credit Reporting Act, 15 U.S.C. §1681 *et seq.*, (2) interference of contract; and (3) defamation against Defendant Trans Union Corporation. Plaintiffs subsequently amended their Complaint on August 26, 2004 to clarify Defendant's name [DE-3] and on September 28, 2004, Defendant filed an Answer to Plaintiffs' Complaint [DE-4]. Plaintiffs again amended their Complaint on April 15, 2005 to add a claim of false light invasion of privacy

[DE-11]. Defendant filed an Answer to Plaintiffs' Second Amended Complaint [DE-14] and a Motion to Dismiss the false light invasion of privacy claim on April 28, 2005 [DE-12].

Defendant subsequently filed Motions for Summary Judgment as to each Plaintiff on July 29, 2005 [DE-41, DE-43]. From August 18, 2005 through September 14, 2005, Plaintiffs filed a series of supplements and supplemental affidavits in response to Defendant's Motions for Summary Judgment. [DE-51, DE-52, DE-53, DE-54, DE-55, DE-56, DE-57, DE-61, DE-62, DE-63]. On September 21, 2005, Plaintiffs filed a Motion seeking leave to file additional affidavits and requesting a hearing [DE-65], to which the Defendant has responded [DE-77]. On September 26, 2005, Plaintiffs filed a motion requesting that Defendants' Motions for Summary Judgment be "barred" [DE-68]. Defendant subsequently filed a Motion to Strike several of the supplements and supplemental affidavits as untimely [DE-69] and Plaintiffs have responded [DE-76]. Pursuant to an Order filed November 14, 2005, the undersigned allowed the Motion to Dismiss as to the false light invasion of privacy claim.

II. FACTS

On June 4, 1991, a joint federal tax lien against Plaintiffs Patricia B. Ward ["Patricia"][1] and Joseph M. Ward ["Joseph"] in the amount of $27,174 was recorded in Pitt County, North Carolina. Although

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[1]For the sake of clarity, Plaintiffs are referred to by their first names when necessary.

the lien against Plaintiffs was released on February 9, 1993, Plaintiffs contend that Defendant Trans Union Corporation ["Trans Union"], a national consumer reporting agency, failed to remove the lien from their respective credit reports.

Joseph maintains that Trans Union published his consumer report, erroneously listing the tax lien, in connection with the following transactions[2]:

(1) On January 24, 2002, Joseph signed an application for credit card processing for his son's business, Joe's Pro Bait Tackle. That same day, Trans Union published Joseph's consumer report to First Data Merchants Services in connection with this transaction ["Transaction One']. On the application, above Joseph's signature, was the following language: "Client acknowledges having received and read the attached Program Guide....and agrees to be bound by all provisions as printed therein." Combined Appendix of Summary Judgment Evidence [DE-45] at Ex. F1. The attached "Program Guide" states, "You authorize us to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement...." Combined Appendix of Summary Judgment Evidence [DE-45] at Ex. F2, ¶ 25.1.

(2) In January 2002, Discover Financial Services ["Discover"] solicited Joseph's application for a credit card. On February 5, 2002, Trans Union

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[2]Trans Union disclosed Plaintiffs' consumer reports to Capital One on April 5, 2002 and disclosed Patricia's consumer report on July 4, 2002. Those disclosures are not before the court, as Plaintiffs have stipulated that they will not seek damages related to those transactions. See Agreed Stipulation [DE-40].

provided Joseph's consumer report to Discover ["Transaction Two"]. In a letter dated February 5, 2002, Discover denied the application due to the tax lien which was erroneously reported on Joseph's consumer report provided by Trans Union. Denial of the application prevented Joseph from taking advantage of a credit card with 0% APR on purchases and balance transfers.

On March 11, 2002, Joseph sent a letter to Trans Union, seeking to clarify the tax lien erroneously listed on his credit report. Trans Union responded via letter on March 19, 2002, and indicated that they were currently investigating the disputed tax lien. Trans Union mailed the investigative results, dated February 12, 2002, to Joseph, indicating the tax lien had been deleted from his consumer report.

Plaintiffs then assumed that the error had been deleted from both of their consumer reports. However, Trans Union did not delete the error from Patricia's credit report and Patricia contends that Trans Union published erroneous credit reports in connection with the following transactions:

(1) Discover sent Patricia an invitation to apply for a Discover Gold Credit Card. On February 21, 2002, she signed the application and returned it to Discover. On March 1, 2002, Trans Union provided Discover with Patricia's consumer report, which listed the erroneous tax lien ["Transaction Three"]. That same day, Discover sent Patricia a letter indicating that her application had been denied due to the lien. Plaintiffs then sent a letter to Discover explaining that the tax lien had been satisfied.

(2) In response to Plaintiff's letter, Discover obtained Patricia's credit report on April 3, 2002 and issued her a Discover credit card ["Transaction Four"].

(3) On May 21, 2002, Trans Union provided a consumer report to The Hartford ["Transacton Five"]. The Hartford established a toll free number than can be used by members of the AARP to obtain a quote on insurance policies. The Hartford obtained Patricia's report in connection with her request for quotes on automobile and umbrella insurance policies.

(4) On June 28, 2002, Trans Union provided a consumer report to The Metris Companies ["Transaction Six"] after Patricia applied, via telephone, for a Direct Merchants Credit Card Bank credit card. The Metris Companies subsequently issued Patricia the credit card.

(5) Patricia applied for a UNC Greensboro Alumni Association Platinum Plus Visa credit card ["MBNA Visa"] marketed by MBNA America in June, 2003. Both Plaintiffs conducted the application via telephone. During the conversation, the MBNA America agent indicated that a tax lien was listed on Patricia's credit report and Joseph explained that the tax lien had been satisfied. Plaintiffs believed they had entered into an agreement with MBNA America, but received a telephone call the next day canceling the agreement. On June 23, 2003, Trans Union provided a consumer report to MBNA America in connection with this application ["Transaction Seven"].

In a letter dated June 25, 2003, Don Hamilton ["Hamilton"], MBNA America customer advocate, called Patricia and explained that MBNA America was unable to approve the credit card because she had sufficient balances on existing revolving lines of credit and had sufficient credit available considering her

income. Patricia subsequently wrote a letter to Hamilton asking, among other things, whether the erroneously reported tax lien was a factor in the denial of her application. Hamilton replied on July 22, 2003, and explained that MBNA was unable to approved the credit card application because Patricia had sufficient balances on revolving credit lines and because she had tax liens appearing on her credit report, which was provided by Trans Union. Denial of Patricia's application prevented Plaintiffs from taking advantage of a 0% APR on all cash advances, including balance transfers. Joseph maintains that he would have benefitted from Patricia's MBNA Visa, in that he had planned to transfer his own unused credit line of $28,963 from his MBNA American Mastercard to the MBNA Visa requested by Patricia.

On August 29, 2003, Joseph sent a letter to Trans Union's Chief Executive Officer, Harry Gambill. In this letter, Joseph described the circumstances of Trans Union's erroneous reporting of the tax lien on Plaintiffs' consumer reports. On October 7, 2003, Plaintiffs received a letter from Trans Union indicating that the tax lien had been deleted from Patricia's consumer report.

Plaintiffs allege that the erroneous inclusion of the tax lien on their credit reports has caused various damages. Specifically, the error has "caused the Plaintiffs to suffer undue irritation, undue inconveniences and aggravation, excessive mental stress, emotional distress and monetary loss." Second Amended Compl. [De-11} at p.26. In addition, Plaintiffs allege damages amounting to, "$800 in finance charges on loans, approximately $380 in wear and tear on copy machines, approximately $150 in

office supplies, approximately $200 in travel expenses and $75 dollars for an attorney's fee." *Id.* at 28.

Trans Union uses a computerized information storage and retrieval system, named Credit Reporting Online Utility System ["CRONUS"]. Trans Union monitors the performance of CRONUS and makes any necessary changes to CRONUS to maintain and improve its accuracy regarding data supplied by data furnishers. The credit data relating to Plaintiffs was processed and maintained using CRONUS. Trans Union receives and CRONUS processes information on approximately 2 billion accounts and public records each month regarding consumers.

Credit information is accepted by Trans Union from data furnishers, who submit data on computer tape in a format compatible with CRONUS. Tapes are reviewed for format errors and anomalies in content prior to the data being loaded into Trans Union's database. Trans Union contracts with public records vendors to obtain information for consumer reports. The vendors are audited and Trans Union conducts periodic site inspections of each vendor.

III. SUMMARY JUDGMENT

A. Standard

Summary Judgment is appropriate when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *See Anderson v. Liberty Lobby*, 477 U.S. 242, 247 (1986). The party seeking summary judgment bears the burden initially of coming forward and demonstrating the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

When making the summary judgment determination, the facts and all reasonable inferences must be viewed in the light most favorable to the non-movant. *Liberty Lobby*, 477 U.S. at 255. Once the moving party has met its burden, the non-moving party then must come forward and demonstrate that such a fact issue does indeed exist. *See Motsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Summary judgment is appropriate against a party who fails to make a showing sufficient to establish any one of the essential elements of the party's claim on which he will bear the burden of proof at trial. *See Celotex*, 477 U.S. at 322-23.

B. Fair Credit Reporting Act

Plaintiffs' Complaint alleges three Fair Credit Reporting Act ["FCRA"] claims, maintaining that Trans Union willfully and negligently violated: (1) Section 1681e(b), which requires consumer reporting agencies to follow reasonable procedures in publishing consumer reports; (2) Section 1681c, which requires that consumer reporting agencies delete obsolete information from consumer reports; and (3) Section 1681b, which requires consumer reporting agencies to publish reports only for permissible purposes. 15 U.S.C. §§1681b, c, and e(b). Trans Union has moved for summary judgment, asserting that neither Plaintiff has succeeded in raising a dispute of material fact as to these FCRA claims.

Congress created the FCRA to protect consumers and ensure that consumer reporting agencies fairly and accurately report credit histories. See 15 U.S.C. § 1681(b) (describing the purpose of the FCRA). The Act imposes obligations on "consumer

reporting agencies" when publishing "consumer reports," and authorizes "consumers" to sue for either willful or negligent violation of these obligations. See 15, U.S.C. §§ 1681n and o. Trans Union and the transactions at issue in this dispute are governed by the FCRA. It is undisputed that Trans Union is a "consumer reporting agency" as defined by Section 1681a(f) of the Act, who published "consumer reports" as defined by Section 1681a(d) regarding Plaintiffs, who are "consumers" as defined by Section 1681a(c).

1. Statute of Limitations

Before addressing Plaintiffs' substantive claims, the Court must first address the statute of limitations. The parties disagree as to which version of the recently amended FCRA is applicable to Plaintiffs' claims. Under either version of the FCRA, however, Plaintiffs' FCRA claims arising from Transactions Two and Three are barred.

Effective March 31, 2004, the FCRA was amended to provide that FCRA claims must be brought by the earlier of "(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability, or (2) 5 years after the date on which the violation that is the basis for such liability occurs." 15 U.S.C. § 1681p. Under this standard, Plaintiffs' claims involving Discover in Transactions Two and Three are barred by the statute of limitations. Trans Union's erroneous publication of Plaintiffs' consumer reports occurred in February and March of 2002. Joseph and Patricia discovered the errors as to the publication of their respective reports in February and March 2002, when each received a letter from Discover denying

their credit card applications. Consequently, the Complaint as to Joseph's consumer report must have been filed by February of 2004 and the Complaint as to Patricia's consumer report must have been filed by March of 2004. Plaintiffs did not meet this deadline, as they did not file their Complaint in the instant lawsuit until June 21, 2004.

Similarly, Plaintiffs' claims as to Transactions Two and Three are barred under the prior version of the FCRA, which provided that a FCRA claim must be brought "within two years from the date on which liability arises, except that where a defendant has materially and willfully misrepresented any information. . . the action may be brought at any time within two years after discovery by the individual of the misrepresentation." 2003 Amendments, 15 U.S.C. §1681p; Pub.L. 108-159, § 156. Plaintiffs filed their claim with respect to Transactions Two andThree more than two years from both the date on which Trans Union published the reports and the date that Plaintiffs discovered the error. Consequently, under either version of the statute of limitations, the disclosures of Plaintiffs' consumer reports in Transactions Two and Three cannot form the basis of Plaintiffs' FCRA claims, as these disclosures are barred by the statute of limitation.

2. Section 1681e(b)

Having determined which claims survive the application of the statute of limitations, the court now turns to the analysis of the merits of Plaintiffs' FCRA claims. The first claim that the court will consider is Plaintiffs' argument that Trans Union has willfully

and negligently violated Section 1681e(b), which provides, "[w]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." 15 U.S.C. §1681e(b). To survive summary judgment, Plaintiffs must raise a genuine issue of material fact as to whether "(1) the consumer report contains inaccurate information and (2) the reporting agency did not follow reasonable procedures to assure maximum possible accuracy." *Dalton v. Capital Associated Indus., Inc.*, 257 F.3d 409, 415 (4th Cir. 2001); *Wadley v. Equifax Information Services, LLC*, 396 F. Supp. 2d 677, 679 (E.D. Va. 2005).

Plaintiffs have established that the consumer reports at issue were inaccurate. Trans Union argues, however, that Plaintiffs have failed to raise a dispute of material fact as to whether it followed reasonable procedures. The plaintiff bears the burden of proof in establishing that the consumer reporting agency failed to follow reasonable procedures. *Dalton*, 257 F.3d at 416. However, "the issue of whether the agency failed to follow 'reasonable procedures' will be a 'jury question [ ] in the overwhelming majority of cases."' Id. (citing *Andrews v. TRW Inc.*, 225 F.3d 1063, 1068 (9th Cir. 2000)). The question of whether Trans Union's procedures were sufficiently reasonable "cannot be resolved on summary judgment unless the reasonableness or unreasonableness of the procedures is beyond question." *Crabill v. Trans Union LLC*, 259 F.3d 662, 664 (7th Cir. 2001).

In the instant case, the issue of whether Trans Union's procedures were sufficiently reasonable is not

"beyond question." It is not clear from the record whether Trans Union acquired the information regarding the release of the federal tax lien against Plaintiffs. Moreover, there are not sufficient facts establishing how this information was collected and why Trans Union failed to delete the lien from Plaintiffs' consumer reports. Consequently, there is an open question as to whether Trans Union reasonably relied on the organization who may or may not have furnished such information. This matter fits into the "overwhelming majority of cases" and is an appropriate question for a jury. Accordingly, Trans Union's Motion for Summary Judgment is DENIED as to Plaintiffs' Section 1681e(b) claim.

3. Section 1681c

Section 1681c of the FCRA provides that, in publishing consumer reports, consumer reporting agencies must exclude "[p]aid tax liens which, from the date of payment, antedate the report by more than seven year." 15 U.S.C. § 1681c(a)(3). As discussed above, it is undisputed that Trans Union inaccurately reported a tax lien on Plaintiffs' consumer reports more than seven years after it had been released. However, it is well established that the "FCRA does not impose strict liability on consumer reporting agencies for inaccuracies in reporting." *Dalton*, 257 F.3d at 417. Rather, the FCRA mandates liability for negligent violations of the Act. 15 U.S.C. § 1681o. Additionally, the FCRA provides for enhanced penalties for willful noncompliance. 15 U.S.C. § 1681n. Plaintiffs, then, must raise a genuine issue of material fact as to whether Trans Union willfully or negligently failed to delete the tax lien from their credit reports

more than seven years after its release. 15 U.S.C. §§ 1681n and o.

a. Willful violation

As discussed above, to survive summary judgment as to their claim for punitive damages, Plaintiffs must proffer sufficient evidence from which a reasonable jury could conclude that Trans Union willfully failed to delete the obsolete tax lien. *See Ruffin-Thompkins v. Experian Information Solutions, Inc.*, 422 F.3d 603, 610 (t7th Cir. 2005) ("The FCRA does not presume damages; instead. . . . the consumer must affirmatively prove that she is entitled to damages."). The Fourth Circuit has explained the showing required to establish a willful violation:

> A showing of malice or evil motive is not required to prove willfulness under the Act. *See, e.g., Stevenson v. TRW, Inc.*, 987 F.2d 288, 294 (5th Cir. 1993); *Yohay v. City of Alexandria Employees Credit Union*, 827 F.2d 967, 972 (4th Cir. 1987). The plaintiff must only show that the defendant "knowingly and intentionally committed an act in conscious disregard for the rights" of the consumer. *Pinner v. Schmidt*, 805 F.2d 1258, 1263 (5th Cir. 1986). *See also Stevenson*, 987 F.2d at 294; Yohay, 827 F.2d at 972.

Id. At 418; *cf., Wantz v. Experian Info. Solutions*, 386 F.3d 829, 834 (7th Cir. 2004)("To act willfully, a defendant must knowingly and intentionally violate the Act, and it must also be conscious that [its] act

impinges on the rights of others.'" (citing *Phillips v. Grendahl*, 312 F.3d 357, 368 (8th Cir. 2002)).

In the instant case, Plaintiffs have failed to raise a genuine issue of material fact as to whether Trans Union willfully violated Section 1681c. Plaintiffs have not proffered any probative evidence that Trans Union consciously impinged on Plaintiffs' rights, and knowingly and intentionally violated the FCRA. To the contrary, Trans Union deleted the erroneous tax lien from Joseph's consumer report one month after notification of the error. Combined Appendix of Summary Judgment Evidence [DE-45] at Ex. A, ¶ 7.

When Trans Union deleted the error on Joseph's consumer report, Plaintiffs assumed that the lien had been deleted from Patricia's report as well. However, Plaintiffs have not provided any evidence indicating that Trans Union knew that the error appeared on both Plaintiffs' consumer reports. Moreover, when Joseph notified Trans Union of the error as to Patricia's consumer report via letter dated August 29, 2003, Trans Union remedied the error by October 2, 2003. Combined Appendix of Summary Judgment Evidence [DE-45] at Ex. A, ¶

9. Plaintiffs have not sufficiently established that Trans Union knew of the obsolete information on Plaintiffs' tax liens and intentionally published the erroneous consumer reports. Accordingly, a reasonable jury could not conclude that Trans Union willfully violated Section 1681c of the FCRA.

b. Negligent violation

The Court also must consider whether a reasonable jury could find that Trans Union

negligently violated Section 1681c of the FCRA. The Act provides, "[a]ny person who is negligent in failing to comply with any requirement imposed under this subchapter . . . is liable in an amount equal to the sum of . . . any actual damages sustained by the consumer as a result of the failure; and . . . the costs of the action together with reasonable attorney's fees." 15 U.S.C. § 1681o(a).

Trans Union maintains that Plaintiffs cannot establish that it negligently violated the Act, because Plaintiffs have not provided evidence of the causal connection between the erroneous consumer reports and the damages alleged. The court agrees. *See Crabill*, 259 F.3d at 662 ("Without a causal relation between the violation of the statute and the loss of credit, or some other harm, a plaintiff cannot obtain an award of 'actual damages.'").

In the instant case, Plaintiffs have not proffered evidence showing that Trans Union's January 24, 2002 publication of Joseph's consumer report to First Data Merchants Services in Transaction One caused the damages alleged. Indeed, in his deposition, Joseph indicated that he had no memory of the purpose of this application. *See* Combined Appendix of Summary Judgment Evidence [DE-45] at Ex. N, p. 271. If Joseph cannot recall the purpose of the application, it is unlikely that there is a causal connection between the consumer report promulgated in connection with this transaction and the injuries asserted. As such, a reasonable jury could not find that publication of the erroneous consumer report in Transaction One caused Joseph's asserted damages.

Plaintiffs have also failed to sufficiently proffer evidence of causation with respect to the publication of Patricia's consumer report in Transactions Four, Five and Six. In Transaction Five, Trans Union published Patricia's consumer report to The Hartford when Patricia requested quotes on automobile and umbrella policies. Plaintiffs have not provided any evidence indicating that the erroneous consumer reports caused Patricia to receive increased insurance quotes. Indeed, Plaintiffs have not indicated whether Patricia actually purchased insurance. See *Tinsley v. TRW*, 879 F. Supp. 550, 552 (D. Md. 1995)(finding no actual damages where the plaintiff "lost no investment opportunity by reason of any credit report nor can he show a lost opportunity to refinance his home mortgage when he never made application for such. The absence of any economic damage dooms Plaintiffs' venture in this Court."). In Transactons Four and Six, Patricia applied for and was given a credit card. Since Patricia received a credit card, there is no indication that publication of the erroneous consumer reports caused any injury.

Patricia, however, has offered sufficient evidence of causation with respect to Transaction Seven. In Transaction Seven, Patricia applied for and was denied a UNC Greensboro Alumni Association Platinum Plus Visa credit card marketed by MBNA America. When MBNA American initially explained why Patricia's application was denied, it did not list the tax lien as one of the factors. However, Trans Union responded in the affirmative when Patricia asked via letter whether the tax lien was a factor in the denial of her application. Specifically, the letter stated, "After careful review of your application, we have

determined that we are unable to approve your request at this time because you have sufficient balances on existing revolving credit lines and *you have tax liens or other liens appearing on your credit file*." Combined Appendix of Summary Judgment Evidence [DE-45] Ex. E3 (emphasis added).

Plaintiffs argue that the erroneous consumer report caused both the denial of the UNC Greensboro Alumni Association Platinum Plus Visa credit card and emotional distress. Such damages may form the basis of a FCRA claim. *See Moore v. Equifax Info. Services, LLC*, 333 F.Supp. 2d 1360, 1365 (N.D. Ga. 2004)(reasoning that damages for humiliation and embarrassment are recoverable under the FCRA, even in the absence of out-of-pocket losses); *Lawrence v. Trans Union, LLC*, 296 F.Supp.2d 582, 588 (E.D. Pa. 2003)("The loss of credit opportunities constitutes compensable harm under the FCRA. It is not necessary for plaintiff to state her emotional damages for humiliation and embarrassment with a great degree of particularity." (internal citations omitted)).

Joseph also claims damages as a result of publication of Patricia's consumer report in connection with Transaction Seven. Specifically, Joseph claims that he would have transferred his own unused credit line of $28,963 from his MBNA American Mastercard to the MBNA Visa requested by Patricia.

However, Joseph has not come forward with sufficient evidence to establish that publication of Patricia's erroneous consumer report caused his alleged damages. Moreover, Joseph does not have standing to assert this claim with respect to Patricia's

consumer report. "Section 1681 . . .provide[s] standing to a parry when a credit report damages that party's individual credit worthiness. It does not provide standing to a party who[se] injuries are merely derivative of the injury to another party's credit worthiness." *Williams v. Equifax Credit Info. Services*, 892 F.Supp.951, 955 (E.D. Mich. 1995). Here, Joseph has not raised a genuine issue of material fact as to whether the error on Patricia's consumer report promulgated in connection with Transaction Seven damaged his credit worthiness. Rather, Joseph asserts that denial of Patricia's credit card application caused him to lose the opportunity to take advantage of a lower APR on his existing line of credit. Such an injury is merely derivative of the injury asserted by Patricia.

Consequently, a reasonable jury could find that Trans Union caused damage to Patricia, and not Joseph, by negligently violating Section 1681c of the FCRA. Accordingly, Trans Union's Motion for Summary Judgment is DENIED as to Patricia's claim of negligent violation of Section 1681c arising from Transaction Seven and is ALLOWED as to Plaintiffs' remaining claims of negligent violation of Section 1681c.

4. Section 1681b

For the basis of their last FCRA claim, Plaintiffs allege that Trans Union published their consumer reports without a permissible purpose. Section 1681b establishes a list of permissible purposes for publishing a consumer report. A consumer reporting agency may furnish a consumer report "[t]o a person which it has reason to believe intends to use the information in

connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an amount of, the consumer." 15 U.S.C. § 1681b(a)(3).

Plaintiffs have failed to establish the Trans Union published a consumer report for an impermissible purpose. As described above, Plaintiffs initiated credit card applications on several occasions, applied for credit card processing for Joe's Pro Bait Tackle, and inquired as to quotes for insurance policies. In each of these transactions, Trans Union published Plaintiffs' consumer reports to the credit provider. The publication of each consumer report was to an organization which intended to conduct a credit transaction with Plaintiffs. Plaintiffs' have provided simply *no* evidence of another, impermissible purpose. Rather, it appears that Plaintiffs do not recall several of these transactions and now claim they were conducted for an impermissible purpose. Such an argument does not provide a basis for this claim.

A reasonable jury could not find that Trans Union published Plaintiffs' consumer reports for an impermissible purpose. Accordingly, Trans Union's Motion for Summary Judgment is ALLOWED as to Plaintiffs' claim of willful and negligent violation of Section 1681b.

C. Defamation

Plaintiffs next allege that Trans Union's publication of consumer reports that reference the

erroneous tax lien constitutes defamation. Under North Carolina law:

> Generally, libel and slander are two forms of defamation, with the difference between them being that slander involves spoken words and libel is written words. *Phillips v. Winston-Salem/Forsyth County Bd. Of Educ.*, 117 N.C.App. 274, 277, 450 S.E. 2d 753, 756 (1994). A statement is defamatory if it tends "to prejudice another in his reputation, office, trade, business, or means of livelihood." *Donovan v. Fiumara, 114 N.C.App.* 524, 526, 442 S.E. 2d 572, 574 (1994)(quoting *Morrow v. Kings Department Stores*, 57 N.C.App. 13, 20, 290 S.E.2d 732, 736, disc. review denied, 306 N.C. 385, 294 S.E.2d 210 (1982)). The statement must also be false. *Id.* at 528, 442 S.E 2d at 574.
>
> Slander and libel are also divided into two general categories of defamation *per se* and defamation *per quod*. A defamatory statement that charges a plaintiff with a crime involving moral turpitude, impeaches his or her trade or business, or accuses him or her of having a "loathsome disease" is actionable *per se* and the plaintiff does not have to allege or prove malice or special damages. They are presumed. *Id* at 527-528, 442 S.E.2d at 574-575. For other defamatory statements, malice and special damages must be alleged and proven. *Id.*

Jolly v. Academy Collection Service, Inc., 400 F.Supp. 2d 851, 861 (M.D.N.C. 2005). In the instant case, Trans Union's false statement regarding the tax lien is

not actionable as defamation *per se*, as it does not involve a crime, loathsome disease, or impeach any business owned by Plaintiffs. Furthermore, the FCRA preempts common law defamation claims that do not allege malice or a willful intent to injure. 15 U.S.C. 1681h(e); *Swecker v. Trans Union Corp.*, 31 F.Supp.2d 536, 539 (E.D.Va. 1998)("By its explicit terms, § 1681h(e) preempts only defamation actions that do not allege malice or willfulness.") Therefore, Plaintiffs must raise a genuine issue of material fact as to whether Trans Union acted with malice or willfulness in falsely reporting the tax lien to survive summary judgment as to their defamation claim. This Plaintiffs have not done.

Specifically, Plaintiffs have not provided any evidence upon which a reasonable jury could find that Trans Union willfully intended to injure Plaintiffs or maliciously referenced the tax lien on their consumer reports. Accordingly, Trans Union's Motion for Summary Judgment as to Plaintiffs' defamation claim is ALLOWED.

D. Interference with Contract

"In order to maintain an action for tortuous interference with contract, a plaintiff must show: (1) a valid contract between the plaintiff and a third person; (2) the defendant knows of the contract; (3) the defendant intentionally induces the third person not to perform the contract; (4) the defendant's inducement is unjustified and (5) actual damages to the plaintiff." *Combs & Associates, Inc., v. Kennedy*, 555 S.E.2d 634, 640 (N.C. App. 2001). In the instant case, Plaintiffs have not identified contracts entered into with First

Data Merchants Services Discover, The Hartford, The Metris Companies, or MBNA America. Moreover, a reasonable jury could not find that Trans Union knew of these alleged contracts and intentionally induced a third party not to perform in accordance with the alleged contracts. Consequently, Plaintiffs' Motion for Summary Judgment as to Plaintiffs' Interference of contract claim is ALLOWED.

IV. PROCEDURAL MOTIONS

A. Plaintiffs' "Motion for Clarification and Motion for Relief"

On September 21, 2005, Plaintiffs filed a "Motion for Clarification and Motion for Relief: [DE-65], seeking clarification regarding whether they are entitled to a hearing in connection with Trans Union's motions for summary judgment and requesting that the court, in its discretion, schedule such a hearing. In the absence of a hearing, Plaintiffs request leave to file additional affidavits in response to Defendant's motions for summary judgment.

The court, in its discretion, finds that Defendant's motions for summary judgment have been fully briefed and a hearing is not necessary. See E.D.N.C. Civ. R. 7.1(i)("Hearings on motions may be ordered by the court in its discretion. Unless so ordered, motions shall be determined without hearing."). Additionally, Plaintiffs have not established good cause for the filing of additional supplements and supplemental affidavits to respond to summary judgment. Accordingly, Plaintiffs' "Motion for Clarification and Motion for Relief" is DENIED.

B. Plaintiffs' "Motion thst [sic] Defendant Trans Union's Summary Judgment Motions be Barred"

On September 26, 2005, Plaintiffs filed a "Motion thst [sic] Defendant Trans Union's Summary Judgment Motions be Barred" [DE-68]. Plaintiffs request the undersigned to delay consideration of Trans Union's Motion for Summary Judgment until Trans Union files additional answers to Plaintiffs' interrogatories. The court interprets this as a motion pursuant to Rule 56(f) of the *Federal Rules of Civil Procedure*, which provides,

> Should it appear from the affidavits of a party opposing the motion [for summary judgment] that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

FED. R.CIV.P.569f). Rule 56(f) provides "that summary judgment be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition." *Anderson v. Liberty Lobby*, 477 U.S. 242, 250 n.5 (1986). In the instant case, there has been ample opportunity for discovery. Furthermore, to the extend that this motion can be interpreted as a motion to compel, the court finds that Trans Union has attempted to fully comply and respond to Plaintiffs' discovery requests. Accordingly, Plaintiffs' "Motion

thst [sic] Defendant Trans Union's Summary Judgment Motions be Barred" is DENIED.

C. Plaintiffs' "Motion that all Hearings in this Action Be Held in New Bern"

Plaintiffs have filed a "Motion that all Hearings in this Action be Held in New Bern," [DE-71], requesting that any hearings and the trial in this matter be held in New Bern due to the Plaintiffs' physical limitations. This motion is DENIED.

D. Trans Union's Motion to Strike

Trans Union has filed a Motion to Strike [DE-69], arguing that Plaintiffs' numerous untimely filed supplements and supplemental affidavits should be stricken, or in the alternative, Trans Union be given leave to file a reply brief. Trans Union filed separate Motions for Summary Judgment as to each Plaintiff on July 29, 2005. Trans Union now maintains that Plaintiffs' filed supplements and supplemental affidavits after the twenty-day deadline mandated by Local Rule 7.1(e)(1). See E.D.N.C. Civ. R. 7.1(e)(1). The court finds that the alleged untimely supplements and supplemental affidavits did not impact the summary judgment analysis. Accordingly, Trans Union's Motion to Strike is DENIED as moot.

IV. CONCLUSION

Based upon the foregoing, it is therefore ORDERED that:

1. Trans Union's Motion for Summary Judgment is

ALLOWED in part and DENIED in part. Trans Union's Motion for Summary Judgment is DENIED as to Plaintiffs' claim of violation of Section 1681e(b) of the FCRA and as to Patricia's claim of negligent violation of Section 1681c of the FCRA arising from Transaction Seven. Trans Union's Motion for Summary Judgment is ALLOWED as to the following claims: (1) Plaintiffs' claim of willful violation of Section 1681c of the FCRA; (2) Plaintiffs' claims of negligent violation of Section 1681c other than Patricia's claim arising from Transaction Seven; (3) Plaintiffs' claims of violation of Section 1681b of the FCRA; (4) Plaintiffs' defamation claim; and (5) Plaintiffs' interference of contract claim.

2. Plaintiffs' "Motion for Clarification and Motion for Relief, " [DE-65] is DENIED.

3. Plaintiffs' "Motion thst [sic] Defendant Trans Union's Summary Judgment Motions be Barred" [DE-68] is DENIED.

4. Plaintiffs' "Motion that all Hearings in this Action be Held in New Bern" [DE-71] is DENIED.

5. Trans Union's Motion to Strike [DE-69] is DENIED.

6. The Clerk of Court is DIRECTED to continue management of this case.

SO ORDERED.

This the 16th day of February, 2006.

James C. Fox
Senior United States District Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No. 4: 04-CV-88

PATRICIA B. WARD,)
JOSEPH M. WARD,)
Plaintiffs,)
)
)
v.) ORDER
)
TRANS UNION)
CORPORATION,)
Defendant.)
)

This matter is before the court upon Plaintiffs' motion for reconsideration [DE-105] and Defendant's motion for clarification [DE-108]. These matters are now ripe for disposition.

1. PROCEDURAL BACKGROUND

Plaintiffs Patricia B. Ward ["Ms. Ward"] and Joseph
M. Ward ["Dr. Ward"] initiated this action on June 21, 2004, asserting claims of defamation and interference of contract, and alleging violations of the Fair Credit Reporting Act ["FCRA"], 15 U.S.C. § 1681 *et seq.*, against Defendant Trans Union Corporation ["Trans Union"]. On July 29, 2005, Trans Union filed motions

for summary judgment as to each Plaintiff. In an order filed on February 16, 2006, the undersigned allowed in part and denied in part Trans Union's motions for summary judgment. The parties now seek clarification and reconsideration of the court's February 16, 2006 order.

II. FACTS[1]

On June 4, 1991, a joint federal tax lien against Plaintiffs in the amount of $27,174 was recorded in Pitt County, North Carolina. Although the lien against Plaintiffs was released on February 9, 1993, Plaintiffs contend that Trans Union, a national consumer reporting agency, "willfully and negligently failed to remove the lien from their respective credit reports.

Dr. Ward's claims arise out of the following publications of his credit report :

(1) On January 24, 2002, Dr. Ward signed an application for credit card processing for his son's business, Joe's Pro Bait Tackle. That same day, Trans Union provided Dr. Ward's consumer report to First Data Merchants Services in connection with this transaction ["Transaction One"].

(2) On February 5, 2002, Trans Union provided Dr. Ward's consumer report to Discover Financial Services ["Discover"] in connection with Dr. Ward's

[1]A more complete statement of the facts is set out in the court's February 16, 2006 order [DE-99].

applications for a Discover credit card ["Transaction Two"]. In a letter dated February 5, 2002, Discover denied Dr. Ward's application, citing "lien" as a reason for the denial. On February 11, 2002, Dr. Ward contacted Trans Union to request a copy of his credit file. Trans Union responded by mailing Dr. Ward a copy of his credit file, dated February 12, 2002, which erroneously listed the May 1991 tax lien. The credit file indicated that Dr. Ward's consumer report had been published to both Discover and First Data Merchant Services. On March 11, 2002, Dr. Ward sent a letter to Trans Union, disputing the tax lien erroneously listed on his credit report.

(3) Trans Union provided Capitol One Bank with a cop of Dr. Ward's consumer report on April 5, 2002 ["Transaction Eight"].

In response to Dr. Ward's March 11 letter, Trans Union conducted an investigation, removed the tax lien from Dr. Ward's credit file, and sent an updated version of the credit file to Dr. Ward. The updated credit file, dated April 12, 2002, indicated that the tax lien had been deleted and that Dr. Ward's consumer report had been published to Capitol One, Discover, and First Data Merchants Services.

Ms. Ward contends that Trans Union published erroneous credit reports in connection with the following transactions:

(1) On February 21, 2002, Ms. Ward applied for a Discover Gold Credit Card. Trans Union provided Discover with a copy of Ms. Ward's consumer report on March 1, 2002 ["Transaction Three"]. In a letter dated

March 1, 2002, Discover indicated that Ms. Ward's application had been denied due to a lien. Ms. Ward requested a copy of her Trans Union credit file on March 7, 2002. In response, Trans Union mailed Ms. Ward a copy of her consumer report, dated March 9, 2002, which erroneously listed the 1991 lien.

(2) On March 19, 2002, Dr. Ward sent a letter to Discover regarding the tax lien as to both he and Ms. Ward. Interpreting the letter as a request to reconsider Ms. Ward's application, Discover issued a credit card to Ms. Ward. In connection with this transaction, Trans Union provided Discover with a copy of Ms. Ward's consumer report on April 3, 2002 ["Transaction Four"].

(3) Trans Union published Ms. Ward's consumer report to Capital One Bank on April 5, 2002 ["Transaction Nine"].

(5) On May 21, 2002, Trans Union provided a consumer report to The Hartford in connection with Ms. Ward's request for quotes on automobile and umbrella insurance policies ["Transaction Five"].

(6) On June 28, 2002, Trans Union provided a consumer report to The Metris Companies after Ms. Ward applied, via telephone, for a Direct Merchants Credit Card Bank credit card ["Transaction Six"].

(7) On July 4, 2002, Trans Union provided Capital One with a copy of Ms. Ward's consumer report ["Transaction Ten"].

(8) On June 23, 2003, Ms. Ward applied for a UNC Greensboro Alumni Association Platinum Plus Visa credit card marketed by MBNA American. Both Plaintiffs conducted the application via telephone. During the conversation, the MBNA America agent indicated that a tax lien was listed on Ms. Ward's consumer report. On June 23, 2003, Trans Union provided a consumer report to MBNA America in connection with this application ["Transaction Seven"].

In a letter dated June 25, 2002, Don Hamilton, MBNA America customer advocate, explained that MBNA America declined Ms. Ward's credit card because she had sufficient balances on existing revolving lines of credit and had sufficient credit available considering her income. On July 10, 2003, Ms. Ward sent a letter to Mr. Hamilton asking, among other things, whether the erroneously reported tax lien was a factor in the denial of her application. Hamilton replied on July 22, 2003 and included the tax lien in the list of reasons why the credit card application was denied.

On September 4, 2003, Trans Union received a letter from Dr. Ward, disputing the tax lien on Ms. Ward's credit file. On October 2, 2003, Trans Union removed the lien from Ms. Ward's credit file.

Plaintiffs filed the instant action on June 21, 2004, asserting the following claims: (1) negligent and willful violation fo 15 U.S.C. §§ 1681b, 1681c, and 1681e(b); (2) defamation; and (3) interference of contract. On July 29, 2005, Trans Union filed motions for summary judgment as to each Plaintiff. In an

order filed February 16, 2006, the undersigned denied Trans Union's motion for summary judgment as to: (1) Plaintiffs' claim of violation of Section 1681e(b) and (2) Ms. Ward's claim of negligent violation of Section 1681c arising from Transaction Seven. The motion was allowed as to: (1) Plaintiffs' claim of willful violation of Section 1681c; (2) Plaintiffs' claims fo negligent violation of Section 1681c other than Ms. Ward's claim arising from Transaction Seven; (3) Plaintiffs' claims of violation of Section 1681b; (4) Plaintiffs' defamation claim; and (5) Plaintiff's interference of contract claim. In that same order, the undersigned also denied various procedural motions filed by the parties. The parties now seek reconsideration and clarification of the court's February 16, 2006 order.

III. ANALYSIS

A. Standard

As discussed above, the undersigned allowed partial summary judgment in favor of Trans Union on February 16, 2003. In their initial motion for reconsideration, Plaintiffs sought reconsideration of the court's order pursuant to Rule 59(e) of the *Federal Rules of Civil Procedure*. However, Rule 59(e) only becomes applicable after a final judgment has been entered in a case. *See Fayetteville Investors v. Commercial Builders, Inc.*, 936 F.2d 1462 1469 (4th Cir. 1991). Here, Plaintiffs are asking the court to reconsider an interlocutory order. Recognizing this, Plaintiffs subsequently amended their motion and now seek reconsideration pursuant to Rule 54(b), which provides:

> [A]ny order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, *and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.*

FED. R. CV.P.54(b)(emphasis added).

The Fourth Circuit has noted that "a[n] interlocutory order is subject to reconsideration at any time prior to the entry of final judgment." *Fayetteville Investors*, 936 F.2d at 1469. "[A] district court retains the power to reconsider and modify its interlocutory judgments, including partial summary judgments, at any time prior to final judgment when such is warranted." *American Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514-15 (4th Cir. 2003). Moreover, "[m]otions for reconsideration of interlocutory orders are not subject to the strict standards applicable to motions for reconsideration of a final judgment." *Id* at 514.

In their motion for reconsideration, Plaintiffs find flaw with the court's ruling as to their FCRA, defamation, and interference of contract claims. Defendants, in their motion for disagree as to which version of the recently amended FCRA is applicable to Plaintiffs' claims. However, the court again finds that under either version of the FCRA, Plaintiffs' FCRA claims arising from certain transactions are barred.

Effective March 31, 2004, the FCRA was amended to provide that FCRA claims must be brought by the earlier of "(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or (2) 5 years after the date on which the violation that is the basis for such liability occurs." 15 U.S.C. § 1681p. The previous version of the FCRA provided that a FCRA claim must be brought "within two years from the date on which liability arises, except that where a defendant has materially and willfully misrepresented any information . . . the action may be brought at any time within two years after discovery by the individual of the misrepresentation." 2003 Amendments, 15 U.S.C. § 1681p; Pub. L. 108-159, § 156.

"[E]ach transmission of the same credit report is a separate and distinct tort to which a separate statute of limitations applies." *Lawrence v. Trans Union LLC*, 296 F.Supp. 2d 582, 587 (E.D.Pa.2003). Consequently, the court must examine each publication of Plaintiffs' consumer reports to determine which are barred by the statute of limitations.

1. Application of FCRA Statute of Limitations to Dr. Ward's claims

As discussed in the court's previous order, Dr. Ward's Claim in connection with Transaction Two is barred under either version of the statute of limitations. Order [DE-99] at pp. 7-8. After reviewing Plaintiffs' motion to reconsider, the court now finds that Dr. Ward's claims in connection with Transactions One and Eight are also untimely.

As described above, Dr. Ward received a copy of his Trans Union credit file in February 2002, which erroneously listed the May 1991 tax lien. The credit file indicated that Dr. Ward's consumer report had been published to Discover Financial Services on February 5, 2002 and First Merchants Data Services on January 24, 2002. In April of 2002, Dr. Ward received a credit file dated April 12, 2002 which indicated that Trans Union provided Capitol One with a copy of Dr. Ward's consumer report on April 5, 2002. Accordingly, Trans Union's alleged violations of the FCRA occurred on January 24, 2002, February 5, 2002, and April 5, 2002, when it published the erroneous reports. *See, e.g., Lawrence,* 296 F.Supp.2d at 587 ("Liability arises under § 1681e(b) when the consumer reporting agency issues an inaccurate consumer report."). The court finds that Dr. Ward became aware of the error on his consumer report and the publications of the erroneous reports when he received a copy of his Trans Union credit file in February and April of 2002. When he received the February 12, 2002 credit report, Dr. Ward discovered both that it contained an error and that his consumer report had been published to Discover and First Data Merchants Services. When Dr. Ward received the April 12, 2002 credit file, he discovered that his consumer report had been published to Capitol One.

Under the current FCRA statute of limitations, Dr. Ward's claim must have been filed by the earlier of two years after the date of discovering the FCRA violation or five years after the date on which the FCRA violation occurred. *See* 15 U.S.C. § 1681p. Dr. Ward's claims based upon Transactions One, Two, and Eight are barred Dr. Ward discovered the violations in

February and April of 2002, more than two years before filing his Complaint on June 21, 2004.

Similarly, under the prior version of the statute of limitations, Dr. Ward's FCRA claims based upon Transactions One, Two, and Eight are barred. The prior version of the statute required initiation of a lawsuit within two years of the date on which liability arose. *See* 2003 Amendments, 15 U.S.C. § 1681p; Pub. L. 108-159, §156. Here, liability arose when Trans Union published the erroneous reports, which was more than two years before Dr. Ward filed suit. In the event of a material and willful misrepresentation, the prior version of the FCRA statute of limitations provided an exception in which an action could be brought within two years of discovery. Even if this exception applied in this case, which it does not, Dr. Ward's claims based upon Transaction One, Two, and Eight are still untimely because he discovered the publication of the erroneous tax lien more than two years before filing suit.

Dr. Ward, however, asserts that his FCRA claims are timely because he did not actually discover the alleged FCRA violations until after filing the instant lawsuit. Dr. Ward argues that he did not discover Trans Union's violation of the FCRA until he obtained "exact copies" of the consumer reports published by Trans Union and Trans Union, in fact, affirmed that erroneous reports had been published. In the alternative, Dr. Ward appears to argue that the statute of limitations did not begin until he learned of the legal relief provided by the FCRA.

The court finds Dr. Ward's argument to be disingenuous and belied by the fact that Dr. Ward sent a letter to Trans Union on March 11, 2002, disputing the tax lien. Consequently, the court now finds that Trans Union's motion for summary judgment is ALLOWED with respect to Dr. Ward's FCRA claims.

2. Application of FCRA statute of limitations to Ms. Ward's claims

Similarly, Ms. Ward's claim of violation of the FCRA based upon Transaction Three is barred by the statute of limitations. Ms. Ward received a copy of her Trans Union credit file in March of 2002, which listed the erroneous tax lien and indicated that her consumer report had been published to Discover on March 1, 2002 and Ms. Ward discovered the violation when she received the consumer report in March of 2002. Consequently, Ms. Ward's FCRA claim based upon Transaction Three is untimely under either version of the statute of limitations because both the alleged violation of the FCRA and Ms. Ward's discovery of it occurred more than two years before Ms. Ward filed suit. Therefore, Trans Union's motion for summary judgment is ALLOWED with respect to Ms. Ward's claim of violation of the FCRA arising from Transaction Three.

C. Substantive FCRA Claims

Having found that Plaintiffs' claims of violation of the FCRA based upon Transactions One, Two, Three, and Eight are untimely, the court will now reconsider Ms. Ward's claims of negligent and willful violation of Sections 1681e(b) and 1681c of the FCRA

with respect to Transactions Four, Five, Six, Seven, Nine, and Ten.

Section 1681e(b) requires consumer reporting agencies to use "reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." 15 U.S.C. 1681e(b). Section 1681c provides that, in publishing consumer reports, reporting agencies must exclude "[p]aid tax liens which, from the date of payment, antedate the report by more than seven years." 15 U.S.C. § 1681c(a)(3). In its February 16, 2006 order, the court found that Ms. Ward had raised a genuine issue of material fact as to whether Trans Union violated Sections 1681e(b) and 1681c by failing to follow reasonable procedures and preparing consumer reports which contained obsolete information. The inquiry does not stop there, however, as Ms. Ward must also sufficiently establish not only that Trans Union violated the FCRA, but that it negligently and/or willfully did so. In their motions, the parties now seek reconsideration and clarification of the court's determination of whether Ms. Ward sufficiently established that Trans Union negligently or willfully violated Sections 1681e(b) and 1681c.

1. Willful violation

Pursuant to Section 1681n, any person who willfully violates the FCRA may be held liable for both actual damages of not less than $100 and not more tan $1,000, punitive damages, costs, and attorney's fees. *See* 15 U.S.C. 1681n(a). To establish a willful violation of the FCRA, "[t]he plaintiff must only show that the defendant 'knowingly and intentionally committed an

act in conscious disregard for the rights' of the consumer.'" *Dalton v. Capital Assoc. Indust., Inc.*, 257 F.3d 409, 418 (4th Cir. 2001)(citing *Pinner v. Schmidt*, 805 F.2d 1258, 1263 (5th Cir. 1986)).

After reconsideration of the issue, the court again finds that Ms. Ward has failed to raise a genuine issue of material fact as to whether Trans Union willfully violated Section 1681e(b) or 1681c in publishing her consumer report in Transactions Four, Five, Six, Seven, Nine, and Ten. Ms. Ward has not offered any evidence to suggest that Trans Union knew of the error on her credit report and intentionally published reports containing the error or willfully failed to follow reasonable procedures. Rather, the uncontroverted evidence suggests that Trans Union deleted the error on Ms. Ward's consumer report shortly after becoming aware of it and the evidence that Trans Union acted willfully is wholly lacking. Consequently, Trans Union's motion for summary judgment is ALLOWED with respect to Ms. Ward's claim of willful violation of Section 1681e(b) and 1681c in connection with Transactions Four, Five, Six, Seven, Nine, and Ten.

2. Negligent violation

Section 1681 provides, "[a]ny person who is negligent in failing to comply with any requirement imposed under [the FCRA] with respect to any consumer is liable to that consumer in the amount equal to the sum of . . . any actual damages sustained by the consumer as a result of the failure." 15 U.S.C. § 1681o(a). To establish a negligent violation of Sections 1681e(b) and 1681c, the plaintiff must not only

sufficiently establish that the consumer reporting agency violated the provision in question, but also that the consumer suffered an injury and that the injury was caused by the error on her consumer report. *See Spitzer v. Trans Union LLC*, 140 F.Supp.2d 562, 564 (E.D.N.C. 2000)(analyzing a Section 1681e(b) claim).

In the February 16, 2006 order, the undersigned found that Ms. Ward had failed to raise a genuine issue of material fact as to whether Trans Union caused her injuries in connection with most of the publications of her consumer report. In their motion for reconsideration, Plaintiffs assert that Ms. Ward has sufficiently raised a genuine issue of material fact on the issue of causation. After reconsideration of this issue, the court agrees.

Ms. Ward asserts that, as a result of the publication of her consumer report containing the erroneous tax lien, she was denied a UNC Greensboro Alumni Association Platinum Plus Visa credit card and lost the opportunity to take advantage of a favorable interest rate, suffered irritation and developed "considerable nervous tension." Amended Compl. [DE-11] at ¶ 38. Additionally, Ms. Ward maintains that she suffered "undue irritation, undue inconveniences and aggravation, excessive mental stress, emotional distress and monetary loss." *Id* at ¶ 47. Ms. Ward seeks compensation for both her emotional distress and her financial loss.

In the February 16, 2006 order, the undersigned found that Ms. Ward had sufficiently established causation with respect to Transaction Seven only, because Ms. Ward had offered evidence suggesting that

she was denied credit on the basis of the erroneous consumer report. With respect to Ms. Ward's remaining transactions, the undersigned reasoned that Ms. Ward had failed to raise a genuine issue of material fact with respect to causation because she had not suffered a financial loss or been denied credit. After reconsideration of the issue, the court now finds that although Ms. Ward was not denied credit in Transactions Four, Five, Six, Nine, and Ten, she has sufficiently established causation because she has alleged that she suffered emotional distress and humiliation as a result of the publication of the erroneous credit reports.

"The term 'actual damages' has been interpreted to include recovery for emotional distress and humiliation. Moreover, no case has held that a denial of credit is a prerequisite to recovery under the FCRA." *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1994)(internal citations omitted). Consequently, "[e]ven where there are no out-of-pocket expenses, humiliation and mental distress do constitute recoverable elements of damage under the [Fair Credit Reporting] Act." *Thompson v. San Antonio Retail Merchants Assoc.*, 682 F.2d 509, 513 (5th Cir. 1982). In the instant action, Ms. Ward has alleged that she suffered emotional distress and humiliation in connection with Trans Union's publication of the erroneous consumer reports. *See Sampson v. Equifax Info. Services, LLC*, 2005 WL 2095092, *4-5 (S.D. Ga. 2005)(reasoning that plaintiff's sworn statement asserting that she suffered humiliation and embarrassment was sufficient to survive summary judgment, but also noting that the plaintiff "must produce some form of independent,

corroborating evidence of her humiliation and embarrassment at trial to recover compensatory damages for her emotional distress"); *Swanson v. Central Bank & Trust Co.*, 2005 WL 1324887, *3 (E.D.Ky. 2005)("Plaintiffs' deposition testimony that they suffered emotional distress and humiliation as a result of Defendants' alleged FCRA violations is sufficient evidence to create a genuine issue of material fact on [the issue of causation].")

The undersigned is not empowered to determine the credibility of Ms. Ward's assertion that Trans Union's publication of the erroneous consumer reports caused her to suffer emotional distress and humiliation. *See, e.g., Guimond*, 45 F.3d at 1333 ("[A]bsent some authority stating that a denial of credit, and not mere credit inaccuracies, are necessary for recovery under FCRA, the issue of causation should have been left for a fact finder to determine."). Therefore, the court finds that Ms. Ward has raised a genuine issue of material fact as to causation and her alleged harm. Consequently, Trans Union's motion for summary judgment is DENIED as to Ms. Ward's claim for negligent violation of Sections 1681e(b) and 1681c arising from Transactions Four, Five, Six, Seven, Nine, and Ten.

IV. CONCLUSION

In conclusion, after reconsideration of the court's February 16, 2006 order, it is therefore ORDERED that:

1. Trans Union's motion for summary judgment is

ALLOWED in part and DENIED in part.

2. Trans Union's motion for summary judgment is ALLOWED as to Dr. Wards claims of: (A) defamation; (B) interference of contract; and (3) negligent and willful violation of 15 U.S.C. §§1681b, 1681c, and 1681e(b). The Clerk of Court is hereby DIRECTED to dismiss this case as to Dr. Ward.[2]

3. Trans Union's motion for summary judgment is DENIED as to Ms. Ward's claim of negligent violation of 15 U.S.C. §§1681c and 1681e(b) arising from Transactions Four, Five, Six, Seven, Nine, and Ten.

4. The Clerk of Court is DIRECTED to continue management of this case with respect to Ms. Ward.

5. To the extent that this order conflicts with the court's February 16, 2006 [DE-99] and June 22, 2006 [DE-117] orders, those orders are hereby

AMENDED. In all other respects, the orders are RATIFIED and ADOPTED.

6. Finally, the court adopts the following schedule in preparation for trial of this matter:

On or before September 5, 2006, each party

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[2]Dr. Ward is reminded that he cannot participate in this matter as a representative for Ms. Ward as such would constitute the unauthorized practice of law. Ms. Ward may continue to represent herself or hire counsel, but Dr. Ward may not purport to act as her legal counsel.

shall submit to the court in Wilmington, North Carolina, the following: (a) the deposition transcript of any witness who has been deposed and that the party intends to present at trial, to which an objection has been made; (b) proposed jury instructions; and (c) an amended proposed pretrial order reflecting the current status of this case.

The Clerk of Court is DIRECTED to schedule and notice a conference on **September 11, 2006, at 9:00 a.m.**, before the undersigned. The court intends to rule on pending objections to evidentiary matters. For that reason, each party should be prepared to present each exhibit to which an objection has been made, and be prepared to argue such objections.

SO ORDERED.

This, the 23rd day of August, 2006.

James C. Fox
Senior United States DistrictJudge

Joseph M. Ward, M.D.
209 Manatee Street
Cape Carteret, NC 28584
Telephone: 252-393-6150

July 26, 2006

David Abright, CEO
Greet America, Inc.
3200 W. Pleasant Run Road, Suite 400
Lancaster, Texas 75146

Dear Mr. Abright:

During the last month or so, I have talked to several of your employees in connection with a problem I have had with Trans Union, LLC. It is my impression that Greet America has an outstanding staff. All of those employees to whom I have talked have been courteous and friendly. I have never had any feeling that any of them were not trying to be reasonably helpful in connection with information I was seeking.

In June, 1991, the Internal Revenue Service entered a tax lien of about $27,000 against my wife and me jointly. The lien was recorded at the Pitt County (NC) Courthouse in June, 1991. In February, 1993, the lien was declared satisfied without any payment. Actually, my wife and I received a refund of about $1500 for the involved year, 1986, after the dust

settled. That did only a little to salve the shock of having had the IRS close all of our bank accounts while I was away from home on a business trip. My wife was horrified.

The lien came to the forefront again in 2002 and 2003 when Trans Union reported it on consumer reports relating to my wife and me on at least 10 occasions (possibly 12). Further, in an interrogatory answer, Trans Union has stated that the tax lien was being reported on my wife's file and on my file as early as December 1995. In another interrogatory answer, Trans Union has indicated that the files of my wife and me contained no indication in December 1995 that the lien had been released. In its answer to still another interrogatory, Trans Union has indicated that it did not learn until October 2, 2003 that the tax lien had been released as to my wife and did not learn until June 6, 2002 that it had been released as to me. Trans Union has indicated elsewhere, I think, that it never received any information from Greet America which indicated that the tax lien had ever been declared satisfied. (I am having trouble locating that statement.)

In the past, Trans Union LLC contended that Superior Information Services gathered the information relating to the herein referred to tax lien at the Pitt County Courthouse. A little later, Trans Union switched to Greet America. In a response (to a motion) that was served on my wife and me on July 19, 2005, Counsel for Trans Union LLC contends that the disputed tax lien information was recorded in Pitt County, North Carolina and reported to Trans Union

by: "GA Public Records Services, Inc., a.k.a. Greet America" .

Yesterday, I called Trans Union LLC Counsel Kasey Ratliff and told him that Trans Union is giving your companies a bum rap. I told him that I had been informed that Greet America, Inc. is a separate entity from Greet America Public Records Service Inc. I also told him that I have been informed that Greet America Public Records Service had been sold to Business Records Corporation in September, 1992 and repurchased by you in about December, 1995. It was my impression that Trans Union Counsel was trying to make your corporations a whipping boy for having failed to report the fact that the tax lien had been declared satisfied. Actually, during most of the time that it would have been easiest to discover it at the Pitt County (NC) Courthouse employing the procedure in use by Greet America Public Records Services, Inc., the company was owned by Business Records Corporation. During that period of time, it is reasonable to believe that Trans Union knew or should have known that a different ownership was involved.

It is my understanding that, in the early 1990's , Greet America Public Records Services, Inc. performed its search for new liens at the Pitt County Courthouse by starting on a given day in the same book on the same page where the previous search had ended. That type of nameless search worked well for discovering new liens, I have been told. It is my understanding that the search for liens that had been satisfied using this nameless method did not work well. Because each lien release was recorded on the same page as the original lien entry, it was necessary to go

way back if one wanted to determine what liens had been satisfied during a period of time. That led to less frequent and less accurate searches than the nameless ones looking for the new entry of liens, I am told.

It is my understanding that at the time you repurchased Greet America Public Records Service, Inc. or shortly thereafter, it was declared that the company would discontinue mass nameless searches and use individual name searches instead. As I understand it, the "new" policy is still in effect almost 11 years later. Congratulations. Individual name searches are obviously far more accurate than mass nameless screening. As I feel sure you are aware, accuracy is very important to the falsely accused.

Let me assure you that I am aware that neither Greet America Inc. nor Greet America Public Records Services, Inc., is in any danger of having a lawsuit entered against them by my wife and/or myself. I understand that the Fair Credit Reporting Act holds Trans Union accountable for the proper gathering of the consumer credit information it elected to report relating to my wife and me, including public records information. I also understand that your companies are protected by a statute of limitations. More important to me is what I believe to be the exceptional quality of those of your employees that I have talked to on the telephone.

Because I am 82 years old and not in good health, I want to avoid a trip to Texas for a deposition in an effort to establish that Trans Union failed to follow reasonable procedures to assure maximum possible accuracy of the information it published relating to the Federal tax lien that had been entered

against my wife and myself, pursuant to 15 U.S.C. 1681e(b), and to establish that Trans Union failed to maintain reasonable procedures to prevent reporting of liens more than 7 years after they have been declared satisfied, as required by 15 U.S.C. 1681e(a). Because my hearing is impaired, a telephone deposition is not very suitable for me. After having talked to Greet America Vice-President Lyndon Wilson it is my opinion that a written statement, preferably an affidavit, from each of them would be sufficient for the needs of my wife and from each of them would be sufficient for the needs of my wife and me. When I discussed this with Mr. Wilson, he advised me that I should indicate that desire to you for consideration. (I have not discussed that matter with Mr. Fernendez.)

The statement I seek from Vice-President Lyndon Wilson is one relating to how Greet America, Inc. or Greet America Public Records Service, Inc. tracked tax liens in North Carolina courthouses (especially the Pitt County Courthouse if Mr. Wilson can provide that information) in the early 1990's. The statement I seek from Chief Financial Officer Rudy Fernendez is one relating to when you sold Greet America Public Records Service Inc. to Business Records Corporation and when you repurchased it. Comments from either or both of them regarding the reliability of nameless mass searches as compared to the reliability of name searches of Court records in a State filing the entry of a lien and its release on the same page of the same book (as North Carolina was doing until about a year ago) would be appreciated.

Thank you for your consideration of the above matters. I apologize for having been so

persistent in getting to the facts related to the faulty reporting of the herein described tax lien. However, I do believe I am justified in seeking out the truth.

Sincerely,

Joseph M. Ward M.D.

Letter from GAPRS
G.A. Public Record Servics, Inc.

August 1, 2006

Joseph M. Ward, M.D.
209 Manatee St.
Cape Carteret, NC 28584

Dear Mr. Ward,

Thank you for your informative letter of July 26, 2006. I can appreciate your frustration with the IRS and incorrect records on your credit report.

You have accurately described the Pitt County NC procedures on satisfied liens that were in place in the early 1990s. I have no idea what they are now, as we ceased gathering those records more than 10 years ago. The process of going back 7 years each month to locate releases would have been unrealistic with regard to time and expense. The Pitt County procedures were incompetent at best, not serving the best interests of their residents, or your case would have been easily avoided.

Regardless of the Pitt County pubic record processes, FCRA requires that credit applications get your specific permission to draw a credit report, and the credit grantor must notify you, if denied credit, of the reason or reasons for the denial. At that point, you would have known there was a problem and sought correction. With 10-12 occasions, it appears that the

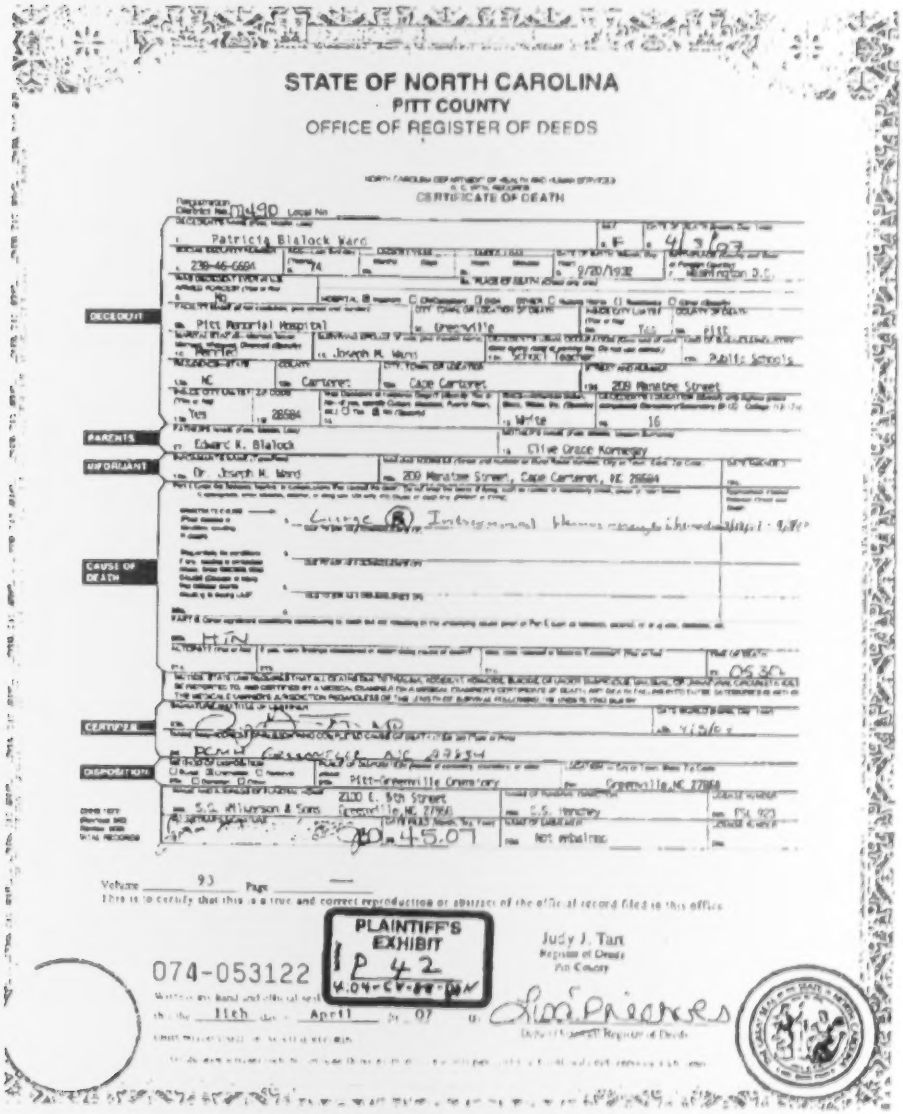
credit grantors were not compliant with FCRA and are, therefore, culpable in this matter. Had we received a complaint, we would have reinvestigated, as required by FCRA, and found the release back at the original lien posting, since we would have known there was one.

As to the GAPRS history, public record collection was a division of Greet America until September of 1992, when we sold that asset to BRC. We bought it back in December 1995, and incorporated it as Greet America Public Record Services, Inc. Since June 1996, we have only performed individual criminal and civil searches in support of the background screening industry, primarily for pre-employment. Since we have purged all credit report type records, I can only acknowledge that we were contracted by Trans Union to collect these records in North Carolina. I don't know the date that we commenced, only that we ceased in June 1996.

I trust that this answers your questions about our possible connection to the release of lien. Had proper procedures been administered when you applied for credit, you could have been spared the grief.

Sincerely,

David B. Abright
CEO
Greet America Public Record Services, Inc.



STATE OF NORTH CAROLINA
PITT COUNTY
OFFICE OF REGISTER OF DEEDS

CERTIFICATE OF DEATH

Patricia Blalock Ward
F
4/2/23
239-46-6604
9/20/1932
Washington D.C.
DECEDENT
Pitt Memorial Hospital
Greenville
Pitt
Joseph M. Ward
School Teacher
Public School's
NC
Carteret
Cape Carteret
209 Manatee Street
28584
White
16
PARENTS
Edward R. Blalock
Ellie Grace Kornegay
INFORMANT
Dr. Joseph M. Ward
209 Manatee Street, Cape Carteret, NC 28584
CAUSE OF DEATH
George (R) Intracranial Hemorrhage
HTN
0530
CERTIFIER
PCM# 6655076 AIC 23554
DISPOSITION
Pitt-Greenville Crematory
Greenville, NC 27834
2100 E. 9th Street
S.G. Allyson & Sons Greenville NC 27858
S.G. Hinnant
Not embalmed
45.00

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This is to certify that this is a true and correct reproduction or abstract of the official record filed in this office.

PLAINTIFF'S EXHIBIT
1 P 42
4:04-CV-88-BM

Judy J. Tart
Register of Deeds
Pitt County

074-053122

11th April 07

Deputy Assistant Register of Deeds